CHAPTER 17

Awards Procedure

**SECTION 42‑17‑10.** Agreement as to compensation.

If more than seven days after the date of an injury or at any time in case of death, the employer and the injured employee or his dependents reach an agreement in regard to compensation under this title, a memorandum of the agreement in the form prescribed by the commission, accompanied by a full and complete medical report shall be filed with the commission within fifteen days after agreement has been reached by the parties for approval of the commission; otherwise, such agreement shall be voidable by the employee or his dependents. All such agreements shall be subject to adjustment and correction as to the compensable rate if subsequent to filing with the commission it is determined that such rate does not reflect the correct average weekly wage of the claimant. If approved by the commission, the memorandum shall for all purposes be enforceable by a court’s decree as specified in this title.

HISTORY: 1962 Code Section 72‑351; 1952 Code Section 72‑351; 1942 Code Section 7035‑59; 1936 (39) 1231; 1980 Act No. 318, Section 5.

Library References

Workers’ Compensation 1122, 1144 to 1151.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 873, 876 to 877, 885 to 894, 896, 899 to 900.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 204:9, Settlement Reporting/Filing.

Modern Workers’ Compensation Section 204:10, Settlement Approval.

NOTES OF DECISIONS

In general 1

1. In general

Request by workers’ compensation claimant for an adjustment of his average weekly wage and compensation rate to reflect his probable future wages was not barred by the doctrines of res judicata and/or collateral estoppel; the workers’ compensation regulations explicitly authorized an adjustment rate in the claimant’s temporary total compensation rate, but the claimant’s average weekly wage and temporary total compensation rate were never actually adjudicated. Sellers v. Pinedale Residential Center (S.C.App. 2002) 350 S.C. 183, 564 S.E.2d 694. Workers’ Compensation 1764

The issue of subject matter jurisdiction may be raised even though an agreement for compensation was executed and approved by the Workers’ Compensation Commission. McCreery v. Covenant Presbyterian Church (S.C.App. 1989) 299 S.C. 218, 383 S.E.2d 264, reversed 303 S.C. 271, 400 S.E.2d 130. Workers’ Compensation 1186

Section 42‑17‑10, which relates to compensation agreements between an employer and an employee, permits correction of the compensation rate at any time before the Workers’ Compensation Commission formally approves the rate of compensation. Once a single commissioner approves the allegedly erroneous rate, the memorandum becomes enforceable as if it were an order of the Commission. Thereafter, the proper remedy is a timely appeal to the full commission and then to the courts; the administrative remedy provided by Section 42‑17‑10 no longer applies. This limitation promotes finality of the Commission’s decisions and certainty as to the amount of compensation payable, and prevents the parties from reopening the issue of the amount of compensation long after the initial agreement has been settled. Lloyd v. AT & T Nassau Metals Corp. (S.C.App. 1989) 299 S.C. 207, 383 S.E.2d 257.

A letter to the Industrial Commission containing only an admission of compensability does not constitute an agreement under Section 42‑17‑10; accordingly, in a workers’ compensation action brought by the wife and daughter of a deceased motel employee against the employer and its insurer, no agreement in regard to compensation had been reached by the parties within the meaning of the statute since there was never an agreement, nor any discussion, as to the amount of compensation to be paid. Bilton v. Best Western Royal Motor Lodge (S.C.App. 1984) 282 S.C. 634, 321 S.E.2d 63.

An agreement for the payment of compensation, when approved by the Commission, is as binding on the parties as an order, decision or award of the Commission unappealed from, or an award of the Commission affirmed upon appeal. Singleton v. Young Lumber Co. (S.C. 1960) 236 S.C. 454, 114 S.E.2d 837.

And can be enforced as is provided in Code 1962 Section 72‑357. Singleton v. Young Lumber Co. (S.C. 1960) 236 S.C. 454, 114 S.E.2d 837.

Subject to the conditions of this section [Code 1962 Section 72‑351] and Code 1962 Section 72‑191 the Industrial Commission has the power to approve a lump sum settlement, and make it final and binding and not subject to review under any conditions. Atkins v. Charleston Shipbuilding & Drydock Co. (S.C. 1945) 206 S.C. 63, 33 S.E.2d 46. Workers’ Compensation 2068

**SECTION 42‑17‑20.** Hearing before commission on compensation payable.

If the employer and the injured employee or his dependents fail to reach an agreement in regard to compensation under this title within fourteen days after the employer has knowledge of the injury or after a death or if they have reached such an agreement which has been signed and filed with the commission and compensation has been paid or is due in accordance therewith and the parties thereto then disagree as to the continuance of any weekly payment under such agreement, either party may make application to the commission for a hearing in regard to the matters at issue and for a ruling thereon. Immediately after such application has been received the commission shall set a date for a hearing, which shall be held as soon as practicable, and shall notify the parties at issue of the time and place of such hearing. The hearing shall be held in the city or county in which the injury occurred, unless otherwise agreed to by the parties and authorized by the commission.

HISTORY: 1962 Code Section 72‑352; 1952 Code Section 72‑352; 1942 Code Section 7035‑60; 1936 (39) 1231; 1955 (49) 459.

CROSS REFERENCES

Prohibition against retaliation based upon employee’s participation in proceedings under this title, see Section 41‑1‑80.

Library References

Workers’ Compensation 1176, 1687 to 1691.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 916 to 926, 1162 to 1169.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 308:4, Notice of Hearing.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Administrative Law. 38 S.C. L. Rev. 5 (Autumn 1986).

Hearing and Deciding Disputed Workmen’s Compensation Cases. 14 SC LQ 457.

NOTES OF DECISIONS

In general 1

Constitutional issues 3

Jurisdiction 2

1. In general

Workers’ Compensation Commission had statutory authority to hold hearing to determine award for permanent total disability (PTD) benefits, even though employer instead of claimant requested hearing; 14 days had passed since claimant’s injury, claim for PTD benefits had not been decided when employer requested a hearing, and claimant and employer did not enter into settlement agreement to resolve any liability under Workers’ Compensation Act. Clemmons v. Lowe’s Home Centers, Inc.‑Harbison (S.C.App. 2015) 412 S.C. 366, 772 S.E.2d 517, rehearing denied, reversed 2017 WL 920730, withdrawn and superseded on rehearing 2017 WL 2829630. Workers’ Compensation 1687

The Full Commission of the Workers’ Compensation Board properly relied on the injured worker’s testimony that he had been unable to work from the date he fell until the date of the hearing 4 1/2 years later where his employer did not dispute either the worker’s injuries or the extent of his disability; unless the extent of loss is technically complicated, its determination need not rest on medical testimony alone. Long v. Atlantic Homes (S.C. 1993) 311 S.C. 237, 428 S.E.2d 711.

A workers’ compensation commissioner properly dismissed, for failure to prosecute, the claim of an injured employee where the employee filed a claim on August 15, 1985, the employer petitioned for a hearing on the merits on January 5, 1988, a hearing was scheduled and subsequently postponed because counsel for the employee could not locate his client, the hearing was rescheduled for October 12, 1988, the employee’s counsel appeared at this time and stated that he was unable to locate his client, and the employer moved to dismiss the claim with prejudice for failure to prosecute; since no agreement for compensation had been reached, the employer had the statutory right to a hearing. McMillan v. Midlands Human Resources (S.C.App. 1991) 305 S.C. 532, 409 S.E.2d 443.

An injured employee could not maintain an action in the court predicated on the alleged refusal of his employer and his employer’s insurance carrier to pay Workers’ Compensation benefits, since the action involved a situation expressly covered by the Workers’ Compensation Act, and for which the Act provided a remedy, which was exclusive; the Act providing that if an employer and injured employee fails to reach an agreement in regard to compensation within 14 days after the employer has knowledge of the injury, then the worker may make application to the Industrial Commission for a hearing in regard to the matters at issue and for ruling thereon, and further providing that all questions arising under the Act, if not settled by agreement of the parties, should be determined by the Industrial Commission. Cook v. Mack’s Transfer & Storage (S.C.App. 1986) 291 S.C. 84, 352 S.E.2d 296, certiorari denied 292 S.C. 230, 355 S.E.2d 861.

Employer and insurance carrier who discontinued weekly compensation payments, due under the terms of an agreement with the employee, without following the procedure outlined in this section [Code 1962 Section 72‑352] were liable to the penalty provided by Code 1962 Section 72‑159. Singleton v. Young Lumber Co. (S.C. 1960) 236 S.C. 454, 114 S.E.2d 837.

This section [Code 1962 Section 72‑352] and Rule 12 of the Industrial Commission contemplate that if the insurance carrier desires to stop further payments of compensation under a temporary award, application should be made to the Commission for permission to do so and the employee should receive notice of the application. Halks v. Rust Engineering Co. (S.C. 1946) 208 S.C. 39, 36 S.E.2d 852. Workers’ Compensation 2013

2. Jurisdiction

In a workers’ compensation action seeking the return of benefits paid, it was appropriate for the Circuit Court to hear the insurer’s motion for restitution based on unjust enrichment where the Commission did not have jurisdiction over the matter because the claimant was not hired in South Carolina. Moore v North Am. Moore v. North American Van Lines (S.C. 1995) 319 S.C. 446, 462 S.E.2d 275.

The issue of subject matter jurisdiction may be raised even though an agreement for compensation was executed and approved by the Workers’ Compensation Commission. McCreery v. Covenant Presbyterian Church (S.C.App. 1989) 299 S.C. 218, 383 S.E.2d 264, reversed 303 S.C. 271, 400 S.E.2d 130. Workers’ Compensation 1186

The phrase “contract of hire” in Section 42‑1‑130 connotes payment and a worker who neither receives nor expects payment for his or her services is not generally considered an employee within the definition. Thus, a volunteer who donated his labor in the construction of a church was not an employee under the workers’ compensation law, and therefore the Workers’ Compensation Commission did not have subject matter jurisdiction over his claims, where there was no evidence that he was paid wages or had a right to demand payment, and there was no evidence that he had entered into a tithing agreement with the church so that his work could be considered as a credit toward his tithe obligation. McCreery v. Covenant Presbyterian Church (S.C.App. 1989) 299 S.C. 218, 383 S.E.2d 264, reversed 303 S.C. 271, 400 S.E.2d 130.

The Workers’ Compensation Commission has subject matter jurisdiction only where the relationship of employer and employee exists at the time of the alleged injury for which the claim is made. The principal that parties cannot by consent confer jurisdiction upon a court also applies to the Workers’ Compensation Commission. McCreery v. Covenant Presbyterian Church (S.C.App. 1989) 299 S.C. 218, 383 S.E.2d 264, reversed 303 S.C. 271, 400 S.E.2d 130. Workers’ Compensation 1179

3. Constitutional issues

Workers’ compensation claimant was not denied procedural due process in connection with hearing to determine permanent total disability (PTD) benefits, where Workers’ Compensation Commission held hearings to determine benefits after notice was provided to claimant and employer, claimant had a right to call any witness and cross‑examine adverse witnesses and was allowed to present any admissible evidence to support claim, and claimant received evaluations from a physician, a neurologist, an independent medical examiner, physical therapist, and a vocational assessment, which Commission considered in deciding claim. Clemmons v. Lowe’s Home Centers, Inc.‑Harbison (S.C.App. 2015) 412 S.C. 366, 772 S.E.2d 517, rehearing denied, reversed 2017 WL 920730, withdrawn and superseded on rehearing 2017 WL 2829630. Constitutional Law 4186; Workers’ Compensation 1687

**SECTION 42‑17‑30.** Commission may appoint doctor to examine injured employee; compensation.

The commission or any member thereof may, upon the application of either party or upon its own motion, appoint a disinterested and duly qualified physician or surgeon to make any necessary medical examination of any employee and to testify in respect thereto. The physician or surgeon must be allowed traveling expenses and a reasonable fee in accordance with a fee schedule set by the commission. The commission may allow additional reasonable amounts in extraordinary cases. The commission or any member thereof has the discretion to order either party to pay the fees and expenses of the physician or surgeon, or the commission or any member thereof may order the parties to share responsibility for payment of the fees and expenses.

HISTORY: 1962 Code Section 72‑353; 1952 Code Section 72‑353; 1942 Code Section 7035‑66; 1936 (39) 1231; 1990 Act No. 407, Section 1, eff April 11, 1990.

Library References

Workers’ Compensation 1305, 1307.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 993 to 996, 998 to 999, 1001.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 304:3, Neutral Examinations.

NOTES OF DECISIONS

In general 1

1. In general

A request by the employer for a physical examination under Code 1962 Section 72‑307 is as effective as an order from the Commission under the terms of this section [Code 1962 Section 72‑353]. Hill v. Skinner (S.C. 1940) 195 S.C. 330, 11 S.E.2d 386.

The legislature has, by use of the word “may,” invested in the Commission the discretion of making or refusing such appointment. Spearman v. F.S. Royster Guano Co. (S.C. 1938) 188 S.C. 393, 199 S.E. 530.

**SECTION 42‑17‑40.** Conduct of hearing; award.

(A) The commission or any of its members shall hear the parties at issue and their representatives and witnesses and shall determine the dispute in a summary manner. The award, together with a statement of the findings of fact, rulings of law, and other matters pertinent to the questions at issue, must be filed with the record of the proceedings and a copy of the award must immediately be sent to the parties in dispute. The parties may be heard by a deputy, in which event he shall swear or cause the witnesses to be sworn and shall transmit all testimony to the commission for its determination and award.

(B) In the event any commissioner or any member of his family residing in the commissioner’s household or any employee of the Workers’ Compensation Commission receives an injury in the course of employment, the case must be heard and determined by the circuit court judge in the county in which the injury occurred. The clerk of court shall docket these cases in the file book for the court of common pleas and these cases must be heard in that court. These cases may be called up for trial out of their order by either party. An appeal from an order of the circuit court judge, pursuant to this subsection, shall be taken in the manner provided by the South Carolina Appellate Court Rules. If the order is not appealed, payment must be made as provided in Section 42‑17‑60. However, this subsection does not apply with respect to claims involving medical benefits only; for claims solely involving medical benefits, subsection (A) applies.

HISTORY: 1962 Code Section 72‑354; 1952 Code Section 72‑354; 1942 Code Section 7035‑61; 1936 (39) 1231; 1989 Act No. 70, Section 1, eff May 10, 1989; 1999 Act No. 55, Section 45, eff June 1, 1999.

CROSS REFERENCES

Prohibition against retaliation based upon employee’s participation in proceedings under this title, see Section 41‑1‑80.

Library References

Workers’ Compensation 1687 to 1703.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 1162 to 1183.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 309:3, Sufficiency.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Administrative Law. 38 S.C. L. Rev. 5 (Autumn 1986).

Degree of disability may be higher than established by medical testimony. 39 S.C. L. Rev. 231 (Autumn 1987).

Hearing and Deciding Disputed Workmen’s Compensation Cases. 14 SCLQ 457.

Attorney General’s Opinions

The delegation to a deputy commissioner of the responsibility to hear evidence and take testimony in the conduct of a hearing for approval of a settlement is consistent with the law provided that final approval authority of the settlement remains with the Commissioners. 1986 Op.Atty.Gen., No. 86‑118 p 348, 1986 WL 192076.

NOTES OF DECISIONS

In general 1

Admissibility of evidence 5

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Presumptions and burden of proof 4

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1. In general

Absence of Commissioners during oral arguments. See McCoy v Easley Cotton Mills (1950) 218 SC 350, 62 SE2d 772. Malphrus v State Com. of Forestry & Workmen’s Compensation Fund (1952) 221 SC 75, 69 SE2d 70.

Clearly this section [Code 1962 Section 72‑354] refers to the Commission as a whole body. Riddle v. Fairforest Finishing Co. (S.C. 1942) 198 S.C. 419, 18 S.E.2d 341.

The award of a single commissioner, or that of a deputy appointed by the Commission, is not a final adjudication of a claim, unless both parties are satisfied therewith, and unless neither of them asks for a review by the full Commission. Riddle v. Fairforest Finishing Co. (S.C. 1942) 198 S.C. 419, 18 S.E.2d 341. Workers’ Compensation 1790

An award under this section [Code 1962 Section 72‑354] would become effective as the award of the Commission, although the hearing may have been, and usually is, before a single commissioner only, unless application is made for a review. McDonald v. Palmetto Theaters (S.C. 1940) 196 S.C. 38, 11 S.E.2d 444. Workers’ Compensation 1789

2. Discovery

Employer exercised due diligence in workers’ compensation proceeding in trying to depose claimant’s treating physician, and therefore should have been granted a continuance to obtain deposition; employer sought to depose physician prior to the hearing, but deposition was scheduled for a date after the hearing due to scheduling difficulties, and record contained no evidence of misconduct by employer that would warrant exclusion of that crucial witness. Trotter v. Trane Coil Facility (S.C.App. 2009) 384 S.C. 109, 681 S.E.2d 36, rehearing denied, certiorari granted, reversed 393 S.C. 637, 714 S.E.2d 289. Workers’ Compensation 1173; Workers’ Compensation 1686

Employer exercised due diligence to obtain deposition of claimant’s supervisor, which was material to the issue of whether claimant gave notice of alleged lower‑back injury prior to seeking medical help, and employer was therefore entitled to a continuance in workers’ compensation proceeding to obtain that testimony; employer planned to have supervisor testify in person at hearing but supervisor was unable to attend due to a hospitalization, and employer then sought to depose supervisor at the first opportunity his doctors would allow, but record was closed before employer was able to do so. Trotter v. Trane Coil Facility (S.C.App. 2009) 384 S.C. 109, 681 S.E.2d 36, rehearing denied, certiorari granted, reversed 393 S.C. 637, 714 S.E.2d 289. Workers’ Compensation 1173

Appellate Panel of the Workers’ Compensation Commission abused its discretion in not allowing for either a continuance or for the record to remain open for employer to take deposition of claimant’s treating physician; physician had unique and crucial testimony which could not be offered by any other witness or through his medical records alone. Trotter v. Trane Coil Facility (S.C.App. 2009) 384 S.C. 109, 681 S.E.2d 36, rehearing denied, certiorari granted, reversed 393 S.C. 637, 714 S.E.2d 289. Workers’ Compensation 1686

Appellate Panel of Workers’ Compensation Commission abused its discretion by not granting employer’s motion for a continuance or keeping the record open for deposition of claimant’s supervisor; supervisor was the person whom claimant was to inform regarding any work‑related injury, and supervisor’s testimony was material to issue of whether claimant gave notice of alleged lower‑back injury prior to seeking medical help. Trotter v. Trane Coil Facility (S.C.App. 2009) 384 S.C. 109, 681 S.E.2d 36, rehearing denied, certiorari granted, reversed 393 S.C. 637, 714 S.E.2d 289. Workers’ Compensation 1173; Workers’ Compensation 1394

Error by Appellate Panel of Workers’ Compensation Commission, in not granting a continuance or keeping the record open for employer to take deposition of claimant’s treating physician, was not harmless; by not being allowed to take physician’s deposition, employer was left with no way of challenging claimant’s medical claims concerning alleged lower‑back injury. Trotter v. Trane Coil Facility (S.C.App. 2009) 384 S.C. 109, 681 S.E.2d 36, rehearing denied, certiorari granted, reversed 393 S.C. 637, 714 S.E.2d 289. Workers’ Compensation 1937

3. Sanctions

A workers’ compensation insurer was properly sanctioned for its failure to attend a compensation hearing, despite its claim that its mail clerk had failed to forward the notice from the Commission to the appropriate department within the company, where it first received notice of the claim 3 years prior to the hearing, and it failed to investigate the claim despite several letters from its insured. Long v. Atlantic Homes (S.C. 1993) 311 S.C. 237, 428 S.E.2d 711.

4. Presumptions and burden of proof

A claimant must establish by the preponderance of the evidence the facts which will entitle him to an award under the Workmen’s Compensation Act. Walsh v U. S. Rubber Co. (1961) 238 SC 411, 120 SE2d 685. Herndon v Morgan Mills, Inc. (1965) 246 SC 201, 143 SE2d 376.

The burden is upon claimants to prove such facts as will render the injury compensable within the provisions of the Workmen’s Compensation Act, and such award must not be based upon surmise, conjecture or speculation. Walker v City Motor Car Co. (1958) 232 SC 392, 102 SE2d 373. Packer v Corbett Canning Co. (1961) 238 SC 431, 120 SE2d 398. Gosnell v Bryant (1962) 240 SC 215, 125 SE2d 405.

Proof that workers’ compensation claimant sustained injury may be established by circumstantial and direct evidence where circumstances lead an unprejudiced mind to reasonably infer the injury was caused by the accident. Tiller v. National Health Care Center of Sumter (S.C. 1999) 334 S.C. 333, 513 S.E.2d 843, rehearing denied. Workers’ Compensation 1490

Circumstantial evidence may be sufficient to support a finding as to causation in a workmen’s compensation case and whether the presence or absence of medical testimony is conclusive depends upon the particular facts and circumstances of the case. Rollins v. Wunda Weve Carpet Co. (S.C. 1970) 255 S.C. 1, 177 S.E.2d 5. Workers’ Compensation 1492

A claimant who asserts his right to compensation must establish by the preponderance of the evidence the facts which will entitle him to an award under the Workmen’s Compensation Act and such award must not be based on surmise, conjecture or speculation. Polk v. E. I. duPont de Nemours Co. (S.C. 1968) 250 S.C. 468, 158 S.E.2d 765.

A claimant has the burden of proving the facts essential to his right to compensation, and an award may not be based upon conjecture or speculation. Where the only reasonable inference from the record is that the claimant has failed to sustain this burden, it would be futile to remand the case. An award which is without support in the evidence should be reversed on appeal whether or not it is legally sufficient as to form and content. Shealy v. Algernon Blair, Inc. (S.C. 1967) 250 S.C. 106, 156 S.E.2d 646.

The difficulty in proving a fact in a compensation case does not relieve the party on whom the burden rests of proving it, and does not shift the burden to the other party. Herndon v. Morgan Mills, Inc. (S.C. 1965) 246 S.C. 201, 143 S.E.2d 376. Workers’ Compensation 1339

Awards of the Commission may not rest upon surmise, conjecture or speculation, but must be founded upon substantial evidence. Herndon v. Morgan Mills, Inc. (S.C. 1965) 246 S.C. 201, 143 S.E.2d 376.

The burden of proving the right to compensation rests upon the claimants. Herndon v. Morgan Mills, Inc. (S.C. 1965) 246 S.C. 201, 143 S.E.2d 376.

The failure of the claimants to furnish evidence from which the inference can be drawn that the injury sustained resulted in death precludes the granting of a compensation award. Herndon v. Morgan Mills, Inc. (S.C. 1965) 246 S.C. 201, 143 S.E.2d 376. Workers’ Compensation 1391

The burden is upon the claimants to prove such facts as will render the injury and ensuing death compensable within the provisions of the Workmen’s Compensation Act, and such award must not be based on surmise, conjecture or speculation. Sola v. Sunny Slope Farms (S.C. 1964) 244 S.C. 6, 135 S.E.2d 321.

5. Admissibility of evidence

Letter that Director of Workers’ Compensation Commission’s Compliance Division sent to Attorney General to report accusations of insurance fraud by claimant was not an ex parte communication between Commission and carrier, and, thus, the Commission did not need to recuse itself from hearing the claim; in contacting the Fraud Division of the Office of the Attorney General, Director was discharging duties required of the Commission by statute, Director merely suggested that the carrier be made aware of individual’s allegations and did not instruct the Attorney General to convey this information to carrier, and in making the suggestion, Director was advising the Attorney General’s Office of a course of action that it had a right to follow and never expressed a desire that the Attorney General take any action on the Commission’s behalf. Fore v. Griffco of Wampee, Inc. (S.C.App. 2014) 409 S.C. 360, 762 S.E.2d 37, rehearing denied, certiorari denied, certiorari granted, certiorari dismissed as improvidently granted 414 S.C. 537, 779 S.E.2d 197. Workers’ Compensation 1687

Letter sent by Director of the Workers’ Compensation Commission’s Compliance Division to the Insurance Fraud Division of the Office of the Attorney General, reporting allegations of insurance fraud by claimant, should have been removed from the record before the single commissioner because it contained inadmissible hearsay, was more prejudicial than probative, and was presented in such a way as to deprive claimant of the opportunity to conduct meaningful discovery; letter was hearsay evidence of an as‑yet unproven allegation that claimant had committed insurance fraud, claimant was unaware of the letter until only eight days before her hearing, and thus, she was deprived of the opportunity to conduct meaningful discovery that might have enabled her to refute employer’s allegations that her claims were spurious. Fore v. Griffco of Wampee, Inc. (S.C.App. 2014) 409 S.C. 360, 762 S.E.2d 37, rehearing denied, certiorari denied, certiorari granted, certiorari dismissed as improvidently granted 414 S.C. 537, 779 S.E.2d 197. Workers’ Compensation 1385; Workers’ Compensation 1696

Including among materials before single commissioner a letter sent by Director of the Workers’ Compensation Commission’s Compliance Division to the Insurance Fraud Division of the Office of the Attorney General, reporting allegations of insurance fraud by claimant, violated Omnibus Insurance Fraud and Reporting Immunity Act, and, therefore, although Director’s letter might have been part of the Commission’s file, it should have been segregated from those portions of the file that could be viewed by members of the public. Fore v. Griffco of Wampee, Inc. (S.C.App. 2014) 409 S.C. 360, 762 S.E.2d 37, rehearing denied, certiorari denied, certiorari granted, certiorari dismissed as improvidently granted 414 S.C. 537, 779 S.E.2d 197. Records 30; Workers’ Compensation 2081

Absent any express time constraint for amending a prehearing brief, workers’ compensation claimant, in promptly supplementing her prehearing brief to include rebuttal witness, complied with state regulations requiring an attorney representing a party at a workers’ compensation hearing to file and serve a prehearing brief, such that single commissioner erred in refusing to allow claimant to call witness. Fore v. Griffco of Wampee, Inc. (S.C.App. 2014) 409 S.C. 360, 762 S.E.2d 37, rehearing denied, certiorari denied, certiorari granted, certiorari dismissed as improvidently granted 414 S.C. 537, 779 S.E.2d 197. Workers’ Compensation 1937

Improper exclusion of testimony from claimant’s supervisor, as result of not granting employer’s motion for a continuance or keeping the record open to obtain supervisor’s deposition, was prejudicial error in workers’ compensation proceeding in which employer asserted as a defense that claimant failed to give notice of alleged lower‑back injury to supervisor before seeking medical help; employer had no way without supervisor’s testimony of contesting the issue of notice. Trotter v. Trane Coil Facility (S.C.App. 2009) 384 S.C. 109, 681 S.E.2d 36, rehearing denied, certiorari granted, reversed 393 S.C. 637, 714 S.E.2d 289. Workers’ Compensation 1937

Any error in admitting deposition testimony of witness regarding the condition of catheters at employer was harmless, in claim for workers’ compensation benefits for hepatitis C, aplastic anemia, and myelodysplasia resulting from exposure to infected catheters, where deposition testimony was cumulative of claimant’s description of catheters. Muir v. C.R. Bard, Inc. (S.C.App. 1999) 336 S.C. 266, 519 S.E.2d 583, rehearing denied, certiorari denied. Workers’ Compensation 1937

Admission of second report of expert was harmless, in claim for workers’ compensation benefits for occupational disease, where employer waived its right to cross‑examine expert by failing to depose him or call him as a witness at hearing, and report was cumulative of doctor’s first report and other evidence in record. Muir v. C.R. Bard, Inc. (S.C.App. 1999) 336 S.C. 266, 519 S.E.2d 583, rehearing denied, certiorari denied. Workers’ Compensation 1937

Any error in admission of letters of several doctors, in which they asserted that blood with which workers’ compensation claimant was transfused tested nonreactive for hepatitis, was harmless, in claim for workers’ compensation benefits resulting from occupational disease, where claimant’s doctor testified that donors for transfusions tested negative for hepatitis C and her testimony was admitted without objection. Muir v. C.R. Bard, Inc. (S.C.App. 1999) 336 S.C. 266, 519 S.E.2d 583, rehearing denied, certiorari denied. Workers’ Compensation 1937

Any error in admission of letter of doctor, in which he stated that myelodysplasia frequently followed aplastic anemia, was harmless, in claim for workers’ compensation benefits resulting from occupational disease, where claimant’s doctor testified that myelodysplasia was related to aplastic anemia and expert report admitted into evidence stated that there was medical literature associating aplastic anemia with progression to myelodysplasia. Muir v. C.R. Bard, Inc. (S.C.App. 1999) 336 S.C. 266, 519 S.E.2d 583, rehearing denied, certiorari denied. Workers’ Compensation 1937

Final determination of witness credibility and the weight to be accorded evidence is reserved to the Workers’ Compensation Commission, and it is not the task of the court to weigh the evidence as found by the Commission. Sharpe v. Case Produce, Inc. (S.C. 1999) 336 S.C. 154, 519 S.E.2d 102. Workers’ Compensation 1939.6

It was within Workers’ Compensation Commission’s discretion, as the ultimate fact finder, to discount medical evidence, namely undated note from doctor stating that claimant’s injury and surgery were result of work related accident, in light of testimony of employer and claimant’s girlfriend that claimant was injured during previous altercation with his girlfriend. Sharpe v. Case Produce, Inc. (S.C. 1999) 336 S.C. 154, 519 S.E.2d 102. Workers’ Compensation 1939.8

Witness’ testimony that employer’s manager had told her in telephone conference that he had not been notified of workers’ compensation claimant’s continuing back problems constituted hearsay, and thus, this testimony was inadmissible with respect to claimant’s action seeking benefits. Hamilton v. Bob Bennett Ford (S.C.App. 1999) 336 S.C. 72, 518 S.E.2d 599, rehearing denied, certiorari granted in part, affirmed as modified 339 S.C. 68, 528 S.E.2d 667. Workers’ Compensation 1385

Workers’ Compensation Commission was required to consider surveillance videotape admitted into evidence by single commissioner, where extent of claimant’s disability was in substantial conflict. Hendricks v. Pickens County (S.C.App. 1999) 335 S.C. 405, 517 S.E.2d 698, rehearing denied. Workers’ Compensation 1814

The Workers’ Compensation Commission is not bound to consider only the medical testimony before it; circumstantial evidence and lay testimony can also support an award. Lloyd v. AT & T Nassau Metals Corp. (S.C.App. 1989) 299 S.C. 207, 383 S.E.2d 257. Workers’ Compensation 1414; Workers’ Compensation 1417

Great liberality is exercised in permitting the introduction of evidence in proceedings under Workmen’s Compensation Acts, and even hearsay evidence may be admissible, provided it is corroborated by facts, circumstances or other evidence. Ham v. Mullins Lumber Co. (S.C. 1940) 193 S.C. 66, 7 S.E.2d 712. Workers’ Compensation 1383; Workers’ Compensation 1385

This section [Code 1962 Section 72‑354] does not authorize lay representation in hearings before the Commission. State ex rel. Daniel v. Wells (S.C. 1939) 191 S.C. 468, 5 S.E.2d 181.

For a case where hearsay evidence was held to be sufficient to support the award of the Industrial Commission see Rice v. Brandon Corp. (S.C. 1939) 190 S.C. 229, 2 S.E.2d 740.

Hearsay is admissible in proceedings under the Compensation Act, though the courts will not permit awards to stand which are based on hearsay evidence uncorroborated by facts, circumstances or other evidence. Spearman v. F.S. Royster Guano Co. (S.C. 1938) 188 S.C. 393, 199 S.E. 530. Workers’ Compensation 1385; Workers’ Compensation 1411

6. Expert testimony

Expert medical testimony is designed to aid the Workers’ Compensation Commission in coming to the correct conclusion, and therefore, the Commission determines the weight and credit to be given to the expert testimony. Sharpe v. Case Produce, Inc. (S.C. 1999) 336 S.C. 154, 519 S.E.2d 102. Workers’ Compensation 1416

Once admitted in workers’ compensation case, expert testimony is to be considered just like any other testimony. Sharpe v. Case Produce, Inc. (S.C. 1999) 336 S.C. 154, 519 S.E.2d 102. Workers’ Compensation 1416

Expert medical testimony is designed to aid the South Carolina Workers’ Compensation Commission in coming to the correct conclusion; therefore, Commission determines the weight and credit to be given to expert testimony. Tiller v. National Health Care Center of Sumter (S.C. 1999) 334 S.C. 333, 513 S.E.2d 843, rehearing denied. Workers’ Compensation 1939.8

If medical expert is unwilling to state with certainty a connection between an accident and an injury, “expression of a cautious opinion” may support award of workers’ compensation benefits if there are facts outside the medical testimony that also support award. Tiller v. National Health Care Center of Sumter (S.C. 1999) 334 S.C. 333, 513 S.E.2d 843, rehearing denied. Workers’ Compensation 1420

If medical expert testimony is not solely relied upon to establish causation, fact finder in workers’ compensation case must look to facts and circumstances of the case. Tiller v. National Health Care Center of Sumter (S.C. 1999) 334 S.C. 333, 513 S.E.2d 843, rehearing denied. Workers’ Compensation 1492

Where the injury is so naturally and directly connected with the accident, proof of causality does not depend upon expert evidence. Rollins v. Wunda Weve Carpet Co. (S.C. 1970) 255 S.C. 1, 177 S.E.2d 5.

There are physical conditions producing disability which the lay mind is not competent to pass upon and in such scientific fields reliance must be had upon expert evidence alone. Rollins v. Wunda Weve Carpet Co. (S.C. 1970) 255 S.C. 1, 177 S.E.2d 5.

There are situations where an injury occurs soon after the accident, are observable to the ordinary person, and the circumstances are such that the lay mind may draw a reasonable inference of causation. In such cases, a finding of causal connection may be sustained even though in conflict with the medical testimony. Rollins v. Wunda Weve Carpet Co. (S.C. 1970) 255 S.C. 1, 177 S.E.2d 5.

The extent or percentage of loss of use of claimant’s arm was not so technically complicated as to require medical testimony for its determination. Rollins v. Wunda Weve Carpet Co. (S.C. 1970) 255 S.C. 1, 177 S.E.2d 5.

Medical testimony that no disability resulted from a first injury affords a factual basis for a determination that all of a claimant’s present disability resulted from a second injury. Rollins v. Wunda Weve Carpet Co. (S.C. 1970) 255 S.C. 1, 177 S.E.2d 5.

Weight of expert testimony. Expert testimony is not binding upon the fact‑finding body if there is competent substantial evidence to the contrary though in matters of such kind which are not of common knowledge, fact‑finding body must accept opinion of experts. Herndon v. Morgan Mills, Inc. (S.C. 1965) 246 S.C. 201, 143 S.E.2d 376.

Where the subject is one for experts or skilled witnesses alone and concerns a matter of science or specialized art or other matters of which a layman can have no knowledge, the unanimous opinion of medical experts on particular subjects may be conclusive, even if contradicted by lay witnesses. Herndon v. Morgan Mills, Inc. (S.C. 1965) 246 S.C. 201, 143 S.E.2d 376. Evidence 574

When the Commission in effect disregards expert testimony, it must perforce find other competent evidence in the record upon which to base its findings. Herndon v. Morgan Mills, Inc. (S.C. 1965) 246 S.C. 201, 143 S.E.2d 376.

When there is a conflict between what the employee claimant alleges to be the fact and the medical testimony, this question before the Industrial Commission is governed by the same principles as a question for the jury in a common‑law case. The medical opinion will not be permitted to control the determination of a factual controversy. Poston v. Southeastern Const. Co. (S.C. 1946) 208 S.C. 35, 36 S.E.2d 858.

The opinion of an expert witness is intended to aid the Commission in coming to a correct conclusion, and the weight and credit to be given such testimony is a matter to be determined by the Commission. But when the Commission in effect disregards such expert testimony, it must perforce find other competent evidence in the record upon which to base its findings. Baker v. Graniteville Co. (S.C. 1941) 197 S.C. 21, 14 S.E.2d 367. Workers’ Compensation 1418

7. Sufficiency of evidence

Substantial evidence that workers’ compensation claimant exaggerated her symptoms and made inconsistent statements at the hearing and to her treating physicians supported decision of Appellate Panel of the Workers’ Compensation Commission that claimant’s testimony concerning the extent of her physical disability was not credible; single commissioner’s order stated claimant ambulated into the hearing room with a cane that no doctor prescribed, presented herself as continually wiping tears that could not be observed, and constantly made loud sniffling sounds from a nose that never “ran.” Fishburne v. ATI Systems Intern. (S.C.App. 2009) 384 S.C. 76, 681 S.E.2d 595. Workers’ Compensation 1410

Competent evidence supported determination of the Appellate Panel of the Workers’ Compensation Commission that proper rating for claimant’s permanent partial disability was ten percent loss for her back, including her right lower extremity; claimant’s treating physician gave claimant an impairment rating of five percent for the whole person and entire spine, one orthopedic physician evaluation gave her an impairment rating of fifteen to twenty percent of the lumbar spine, and another orthopedic physician gave her a physical impairment of twenty‑four percent for the whole person and twenty‑seven percent of the lumbar spine. Fishburne v. ATI Systems Intern. (S.C.App. 2009) 384 S.C. 76, 681 S.E.2d 595. Workers’ Compensation 1646.11; Workers’ Compensation 1646.14

There was sufficient evidence that workers’ compensation claimant did not suffer from a serious medical condition, as required to support determination that she was not entitled to award for permanent total disability; although psychologist signed statement that claimant was permanently and totally disabled, claimant’s treating physician, and a functional capacity evaluation, determined claimant met physical demands to perform medium work, diagnostic testing showed only mild disc degenerative disease, at least three health care providers indicated there was a non‑organic or psychological component to claimant’s back pain, and treating physician’s reports stated that claimant’s mood was stable and drugs were controlling her depression. Fishburne v. ATI Systems Intern. (S.C.App. 2009) 384 S.C. 76, 681 S.E.2d 595. Workers’ Compensation 1627.8(2); Workers’ Compensation 1627.11(2)

Decision of Appellate Panel of the Workers’ Compensation Commission, finding claimant was not entitled to a separate award for permanent partial disability benefits for her right lower extremity, after having determined that the ten percent permanent partial disability award for claimant’s back injury encompassed any right lower extremity radiculopathy, was supported by evidence; claimant presented no evidence that she had sustained a specific injury to her right lower extremity, orthopedic physician noted he did not see indication of any disc disease that would cause all of her symptoms, and psychologist testified that, on claimant’s recent visit, she told him the pain was not all the way down her leg and in her foot like it had been. Fishburne v. ATI Systems Intern. (S.C.App. 2009) 384 S.C. 76, 681 S.E.2d 595. Workers’ Compensation 1646.14

Decision of Appellate Panel of the Workers’ Compensation Commission, finding that claimant was only entitled to additional medical treatment to wean her from unnecessary narcotics, was supported by evidence; although a psychologist and one orthopedic physician believed that claimant needed to be maintained on medication, an independent medical examiner and claimant’s treating physician both noted that claimant demonstrated four of “Waddell’s” five signs, suggesting a non‑organic source for her pain, and another orthopedic physician noted he did not see indications of any disc disease that would cause all of claimant’s symptoms. Fishburne v. ATI Systems Intern. (S.C.App. 2009) 384 S.C. 76, 681 S.E.2d 595. Workers’ Compensation 998.6(3)

Full commission’s finding that worker suffered a 30 percent loss of use of her back because of injuries received when she slipped and fell at work was supported by substantial evidence, including testimony of the injured worker, notwithstanding that medical testimony fixed the worker’s back loss at only 15 percent. Cropf v. Pantry, Inc. (S.C.App. 1986) 289 S.C. 106, 344 S.E.2d 879. Workers’ Compensation 1646.11

8. Findings of fact

In workers’ compensation proceedings, where uncontroverted medical opinions are merely deductions drawn from certain symptoms, the final conclusion remains with the triers of fact. Sharpe v. Case Produce, Inc. (S.C. 1999) 336 S.C. 154, 519 S.E.2d 102. Workers’ Compensation 1939.8

In an action to recover workers’ compensation, the Circuit Court acted improperly when made its own fact findings regarding a worker’s alleged injury and the evidence on medical causation; only the Workers’ Compensation Commission is authorized to make such findings of fact. Sigmon v. Dayco Corp. (S.C.App. 1994) 316 S.C. 260, 449 S.E.2d 497.

The circuit court erred in reinstating the order of a single commissioner in a workers’ compensation case, after the court correctly found that the decision of a 3‑member panel of the full commission had made only conclusory findings of fact and thus its decision was not supported by substantial evidence, where it then reversed the panel’s decision and reinstated the original award of the single commissioner; the circuit court should have remanded the case to the commission to make definite and detailed findings of fact. Baldwin v. James River Corp. (S.C.App. 1991) 304 S.C. 485, 405 S.E.2d 421.

Award not containing separate findings of fact and conclusions of law held to state factual findings in manner sufficient to support conclusion. Airco, Inc. v. Hollington (S.C. 1977) 269 S.C. 152, 236 S.E.2d 804.

Although use of separate headings in statement of enumeration of findings of facts and conclusions of law probably would be better practice, nothing in Section 42‑17‑40 requires use of such format. Airco, Inc. v. Hollington (S.C. 1977) 269 S.C. 152, 236 S.E.2d 804.

Where there was a dispute as to whether the employee gave timely notice of his injury, the hearing commissioner must make a specific, express finding as to whether notice was timely or excused. Aristizabal v. I. J. Woodside‑Division of Dan River, Inc. (S.C. 1977) 268 S.C. 366, 234 S.E.2d 21.

Where the decision of the Commission fails to comply with the requirements of this section [Code Section 72‑354], it will ordinarily be reversed and the cause remanded to the Commission, where the evidence is in conflict, in order that such detailed and specific findings may be made as will enable the appellate court to properly review the factual and legal basis of the award. Hill v. Jones (S.C. 1970) 255 S.C. 219, 178 S.E.2d 142.

Not only must findings of fact be made upon the essential factual issues, but they must also be sufficiently definite and detailed to enable the appellate court to properly determine whether the findings of fact are supported by the evidence and whether the law has been properly applied to those findings. Hill v. Jones (S.C. 1970) 255 S.C. 219, 178 S.E.2d 142.

It is duty of the Commission to make specific findings of fact upon which a claimant’s entitlement to compensation may rest and upon which the amount of compensation due him may be calculated by one of the statutory formulae. Awards without such specific findings do not comply with the requirements of the Act and are illegal. Shealy v. Algernon Blair, Inc. (S.C. 1967) 250 S.C. 106, 156 S.E.2d 646. Workers’ Compensation 1752

In a workmen’s compensation case the Industrial Commission is the fact‑finding body. Walker v. City of Columbia (S.C. 1966) 247 S.C. 241, 146 S.E.2d 856.

Duty to determine factual issues is solely on Commission and courts have no authority to determine such issues except in jurisdictional matters, and such duty requires that not only must findings of fact be made upon essential factual issues but they must be sufficiently definite and detailed to enable appellate court properly to determine whether findings of fact are supported by evidence and that law has been properly applied to them. Drake v. Raybestos‑Manhattan, Inc. (S.C. 1962) 241 S.C. 116, 127 S.E.2d 288.

9. Review

Although single commissioner’s order was affected by an error of law because of the single commissioner’s refusal to exclude from the record an exhibit that was hearsay evidence of an ongoing fraud investigation, final determination of witness credibility and the weight to be accorded evidence was reserved to the Appellate Panel of the Workers’ Compensation Commission, and because Appellate Panel stated in its own order that it did not rely on this exhibit, claimant failed to establish that her substantial rights were prejudiced as a result of either an error of law in the Appellate Panel’s decision or clearly erroneous findings of fact by the Appellate Panel. Fore v. Griffco of Wampee, Inc. (S.C.App. 2014) 409 S.C. 360, 762 S.E.2d 37, rehearing denied, certiorari denied, certiorari granted, certiorari dismissed as improvidently granted 414 S.C. 537, 779 S.E.2d 197. Workers’ Compensation 1937

Because testimony that was improperly excluded in workers’ compensation proceeding could affect employer’s remaining arguments on appeal from circuit court order affirming award for back injury, Court of Appeals would vacate the remainder of circuit court’s order and would remand all issues to the Appellate Panel of Workers’ Compensation Commission for reconsideration following the taking of the additional testimony. Trotter v. Trane Coil Facility (S.C.App. 2009) 384 S.C. 109, 681 S.E.2d 36, rehearing denied, certiorari granted, reversed 393 S.C. 637, 714 S.E.2d 289. Workers’ Compensation 1949

Decision of single commissioner cannot be taken directly to Circuit Court on appeal, without first being reviewed by full commission. Janhrette v. Union Camp Paper Corp. (S.C. 1987) 293 S.C. 59, 358 S.E.2d 704. Workers’ Compensation 1804

Appeal from single workers compensation commissioner’s decision cannot be taken directly, to circuit court without first being reviewed by full commission. Janhrette v. Union Camp Paper Corp. (S.C. 1987) 293 S.C. 59, 358 S.E.2d 704. Workers’ Compensation 1804

Only the Commission is authorized to pass upon the weight of the evidence in a workmen’s compensation case, and it is proper to remand a case to it for required findings where the record contains evidence from which such findings may be made. Shealy v. Algernon Blair, Inc. (S.C. 1967) 250 S.C. 106, 156 S.E.2d 646.

Appellate court will not imply finding of fact as to basic issues of liability for compensation, which would impose upon such court function of determining such facts from conflicting evidence. Drake v. Raybestos‑Manhattan, Inc. (S.C. 1962) 241 S.C. 116, 127 S.E.2d 288. Workers’ Compensation 1939.2

It is proper for lower court to remand on own motion where Commission has failed to make essential findings of fact or findings made are so indefinite or general as to afford no reasonable basis upon which appellate court can determine whether findings are supported by evidence and whether law has been properly applied. Drake v. Raybestos‑Manhattan, Inc. (S.C. 1962) 241 S.C. 116, 127 S.E.2d 288. Workers’ Compensation 1949

**SECTION 42‑17‑50.** Review and rehearing by commission.

If an application for review is made to the commission within fourteen days from the date when notice of the award shall have been given, the commission shall review the award and, if good grounds be shown therefor, reconsider the evidence, receive further evidence, rehear the parties or their representatives and, if proper, amend the award.

Each application for commission review must be accompanied by a fee equal to that charged in circuit court for filing a summons and complaint in order to defray the costs of the review. If the commission determines at the conclusion of the review that the appeal was without merit, it may charge, in its sole discretion, the appellant an additional fee not to exceed two hundred fifty dollars.

HISTORY: 1962 Code Section 72‑355; 1952 Code Section 72‑355; 1942 Code Section 7035‑62; 1936 (39) 1231; 1981 Act No. 178 Part II Section 38; 1989 Act No. 197, Section 2.

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LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Administrative Law. 38 S.C. L. Rev. 5 (Autumn 1986).

Degree of disability may be higher than established by medical testimony. 39 S.C. L. Rev. 231 (Autumn 1987).

Hearing and Deciding Disputed Workmen’s Compensation Cases. 14 SCLQ 457.

Attorney General’s Opinions

The Industrial Commission has jurisdiction to entertain claims of the Second Injury Fund at Claimant v. Employer/Carrier hearings. The degree of participation by the Second Injury Fund at these hearings, in absence of statutory directives, is controlled by the procedural mandates provided in Title 42 and the Industrial Commission’s rule‑making authority provided for in Section 42‑3‑30. If the Second Injury Fund is allowed to participate in Claimant v. Employer/Carrier hearings, it is bound by the decision as to questions of law and fact and therefore in order to protect the Second Injury Fund’s rights and remedies under the Act, the Second Injury Fund must be provided an opportunity to apply for a review of the decision. 1980 Op.Atty.Gen., No 80‑33, p 64, 1980 WL 81917.

Review is like new trial where full Commission sat at initial hearing. The full Commission can, under the wording of Code 1962 Section 72‑354, sit as a body at the initial hearing instead of assigning this task to one of the individual Commissioners or to a deputy. In such circumstances the review provided for by this section [Code 1962 Section 72‑355] would be conducted by the full Commission and would be in the nature of a motion for a new trial made before a circuit judge in the circuit courts. 1963‑64 Op.Atty.Gen., No. 1698, p 155, 1964 WL 8321.

A Commissioner should pass upon matters coming before him in a fair and impartial manner without prejudice or bias. 1963‑64 Op.Atty.Gen., No. 1698, p 155, 1964 WL 8321.

But a Commissioner is not, per se, disqualified to sit in the appellate procedure in which his award is considered. 1963‑64 Op.Atty.Gen., No. 1698, p 155, 1964 WL 8321.

The fact that a Commissioner has previously considered the facts which he faces upon review does not preclude him in all cases from acting in an appellate capacity. 1963‑64 Op.Atty.Gen., No. 1698, p 155, 1964 WL 8321.

Nor may he be disqualified by the Commission. The Commission is without power to disqualify one of its members from sitting in reviews in which that Commissioner’s award is under consideration. 1963‑64 Op.Atty.Gen., No. 1698, p 155, 1964 WL 8321.

For proper cause, however, a Commissioner may disqualify himself. 1963‑64 Op.Atty.Gen., No. 1698, p 155, 1964 WL 8321.

As disqualification is a matter of legislative discretion. Whether a Commissioner shall be disqualified as a matter of law to sit on the de novo hearing before the full Commission is a matter of legislative discretion. 1963‑64 Op.Atty.Gen., No. 1698, p 155, 1964 WL 8321.

NOTES OF DECISIONS

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1. In general

The clear intent of this whole Act is to provide a right of appeal, and the machinery for perfecting that appeal is found in this section [Code 1962 Section 72‑355] and Code 1962 Section 72‑356. Riddle v Fairforest Finishing Co. (1942) 198 SC 419, 18 SE2d 341. In Re Crawford (1944) 205 SC 72, 30 SE2d 841.

And to provide simplicity of procedure. Baker v Graniteville Co. (1941) 197 SC 21, 14 SE2d 367, citing McDonald v Palmetto Theaters (1941) 196 SC 460, 13 SE2d 602.

Pursuant to statute governing review by the Workers’ Compensation Commission, the Commission shall weigh the evidence as presented at the initial hearing and, if good grounds are shown, make its own findings of fact and reach its own conclusions of law consistent or inconsistent with those of the Single Commissioner. Pack v. State Dept. of Transp. (S.C.App. 2009) 381 S.C. 526, 673 S.E.2d 461. Workers’ Compensation 1820

Section 42‑17‑50 provides that a party may file an application for review of the single Workers’ Compensation commissioner’s ruling; however, only issues within the application for review are preserved for the full Commission. Creech v. Ducane Co. (S.C.App. 1995) 320 S.C. 559, 467 S.E.2d 114, rehearing denied, certiorari denied. Workers’ Compensation 1814

Decision of single commissioner cannot be taken directly to Circuit Court on appeal, without first being reviewed by full commission. Janhrette v. Union Camp Paper Corp. (S.C. 1987) 293 S.C. 59, 358 S.E.2d 704. Workers’ Compensation 1804

Appeal from single workers compensation commissioner’s decision cannot be taken directly to circuit court without first being reviewed by full commission. Janhrette v. Union Camp Paper Corp. (S.C. 1987) 293 S.C. 59, 358 S.E.2d 704. Workers’ Compensation 1804

In accordance with Section 42‑17‑50, when reviewing the evidence and award of a hearing commissioner, the Commission may make its own findings of fact and reach its own conclusions of law either consistent or inconsistent with those of the hearing commissioner. Lowe v. Am‑Can Transport Services, Inc. (S.C.App. 1984) 283 S.C. 534, 324 S.E.2d 87. Workers’ Compensation 1820

Full Commission has broad discretion for its proceedings, as indicated by this section [Code 1962 Section 72‑355]. Green v. Raybestos‑Manhattan, Inc. (S.C. 1967) 250 S.C. 58, 156 S.E.2d 318. Workers’ Compensation 1821

The statute empowers the full Commission to make its own findings of fact and to reach its own conclusions of law consistent with or inconsistent with those of the hearing commissioner. Green v. Raybestos‑Manhattan, Inc. (S.C. 1967) 250 S.C. 58, 156 S.E.2d 318.

It is logical for the full Commission, which did not have the benefit of observing the witnesses, to give weight to the hearing commissioner’s opinion, but the full Commission may disagree with his findings based on the credibility of witnesses. Green v. Raybestos‑Manhattan, Inc. (S.C. 1967) 250 S.C. 58, 156 S.E.2d 318.

If no application is made for review of the hearing commissioner’s award, that award becomes effective as the award of the Commission. Wall v. C. Y. Thomason Co. (S.C. 1957) 232 S.C. 153, 101 S.E.2d 286. Workers’ Compensation 1790

This section [Code 1962 Section 72‑355] has reference to a review of the award of the hearing commissioner, and has no relation to a rehearing, a new trial or the introduction of further evidence following action of the full Commission after a review of the award of the hearing commissioner. In re Crawford (S.C. 1944) 205 S.C. 72, 30 S.E.2d 841.

All findings of fact and law by the hearing commissioner become and are the law of the case, except only those within the scope of the exception and the notice given to the parties by the Commission. Ham v. Mullins Lumber Co. (S.C. 1940) 193 S.C. 66, 7 S.E.2d 712. Workers’ Compensation 1810; Workers’ Compensation 1820

2. Constitutional issues

That full Workers’ Compensation Commission voted on claimant’s occupational disease claim on same day the Commission heard oral argument did not demonstrate that the Commission lacked familiarity with claim when it decided case and, thus, employer’s statutory and constitutional rights to due process were not violated, where the Commission stated it reviewed the single commissioner’s award, weighed the evidence presented at initial hearing, and considered issues raised in briefs of parties, and questions the Commission asked during arguments were merely an attempt to narrow issues rather than admissions that the commissioners were unfamiliar with record. Muir v. C.R. Bard, Inc. (S.C.App. 1999) 336 S.C. 266, 519 S.E.2d 583, rehearing denied, certiorari denied. Workers’ Compensation 1687

3. Timeliness

Petition for rehearing was inapplicable to matters before the Appellate Panel of the Workers’ Compensation Commission, and, thus, workers’ compensation claimant’s petition for rehearing on Panel’s limitations‑based dismissal of his claim for compensation could not toll the time in which claimant was required to file petition for judicial review of the Panel’s decision. Rhame v. Charleston County School Dist. (S.C.App. 2012) 399 S.C. 477, 732 S.E.2d 202, rehearing denied, certiorari granted, reversed 412 S.C. 273, 772 S.E.2d 159, on remand 415 S.C. 162, 781 S.E.2d 151, certiorari dismissed. Workers’ Compensation 1802

Full Workers’ Compensation Commission lacks the authority to extend the fourteen days permitted for the filing of an appeal from the decision of a single commissioner. Allison v. W.L. Gore & Associates (S.C. 2011) 394 S.C. 185, 714 S.E.2d 547, rehearing denied. Workers’ Compensation 1809

Full Workers’ Compensation Commission lacked jurisdiction to hear workers’ appeal from order of single commissioner denying benefits to employee, where employee filed form required to perfect appeal two days after fourteen‑day statutory deadline. Allison v. W.L. Gore & Associates (S.C. 2011) 394 S.C. 185, 714 S.E.2d 547, rehearing denied. Workers’ Compensation 1809

4. Receipt of further evidence

In a workers’ compensation action, the employer did not preserve for appeal its allegation that the claimant made an election of remedies by checking the “general disability” box on his form 50 rather that the “specific disability” box where the employer (1) failed to raise the argument to the full commission or the Circuit Court, (2) failed to claim any resulting prejudice ‑ e.g. that the lack of notice of a Section 42‑9‑30 claim caused a failure to procure, discover, or present relevant evidence, and (3) failed to seek to introduce any additional evidence to the Workers’ Compensation Commission as allowed by Section 42‑17‑50 upon learning that the single commissioner awarded benefits under Section 42‑9‑30. Harbin v. Owens‑Corning Fiberglas (S.C.App. 1994) 316 S.C. 423, 450 S.E.2d 112.

Proper procedure for the taking of additional testimony before the full Commission is outlined in Commission’s Rule 16. Green v. Raybestos‑Manhattan, Inc. (S.C. 1967) 250 S.C. 58, 156 S.E.2d 318.

If the full Commission undertakes to receive additional evidence, due process requires that counsel should be alerted beforehand so that they may be prepared to participate in the proceedings. Such is required by the Commission’s own Rule 16. Green v. Raybestos‑Manhattan, Inc. (S.C. 1967) 250 S.C. 58, 156 S.E.2d 318.

It is error for the Commission to take unsworn testimony from a portion of the witnesses and to rely upon the testimony as a basis for its findings. Green v. Raybestos‑Manhattan, Inc. (S.C. 1967) 250 S.C. 58, 156 S.E.2d 318.

Which can be cured only by remanding the case to take all testimony anew. Where the credibility of the various witnesses is the key to the correct determination of a case, prejudicial error resulting from taking unsworn testimony from some witnesses can be cured only by remanding the case to the full Commission for the purpose of taking all of the testimony anew and availing itself of full opportunity to pass upon the credibility of all of the witnesses. Green v. Raybestos‑Manhattan, Inc. (S.C. 1967) 250 S.C. 58, 156 S.E.2d 318.

The Commission is given broad discretionary powers with respect to taking of additional testimony. Spearman v. F.S. Royster Guano Co. (S.C. 1938) 188 S.C. 393, 199 S.E. 530.

5. Compensation agreements

Section 42‑17‑10, which relates to compensation agreements between an employer and an employee, permits correction of the compensation rate at any time before the Workers’ Compensation Commission formally approves the rate of compensation. Once a single commissioner approves the allegedly erroneous rate, the memorandum becomes enforceable as if it were an order of the Commission. Thereafter, the proper remedy is a timely appeal to the full commission and then to the courts; the administrative remedy provided by Section 42‑17‑10 no longer applies. This limitation promotes finality of the Commission’s decisions and certainty as to the amount of compensation payable, and prevents the parties from reopening the issue of the amount of compensation long after the initial agreement has been settled. Lloyd v. AT & T Nassau Metals Corp. (S.C.App. 1989) 299 S.C. 207, 383 S.E.2d 257.

5.5. Final decision

Statute, requiring that an application for review be made to the Workers’ Compensation Commission within fourteen days from the date when notice of the award shall have been given provides for appeals from an “award,” which is defined as a final decision, mandating that appeals only be from a final decision. Levi v. Northern Anderson County EMS (S.C.App. 2014) 409 S.C. 374, 762 S.E.2d 44, rehearing denied, certiorari denied. Workers’ Compensation 1806

Employer’s appeal to Appellate Panel of the Workers’ Compensation Commission from the single commissioner’s decision, which denied employer’s motion to dismiss workers’ compensation claim, was not from a final judgment and, thus, was interlocutory and not appealable; appeal must be from an “award,” not simply any decision. Levi v. Northern Anderson County EMS (S.C.App. 2014) 409 S.C. 374, 762 S.E.2d 44, rehearing denied, certiorari denied. Workers’ Compensation 1806

Appeals from the single commissioner to the Appellate Panel of the Workers’ Compensation Commission must be from final orders, and single commissioner’s denial of a motion to dismiss is not a final decision. Levi v. Northern Anderson County EMS (S.C.App. 2014) 409 S.C. 374, 762 S.E.2d 44, rehearing denied, certiorari denied. Workers’ Compensation 1806

6. Review

When reviewing a decision of the Workers’ Compensation Commission, the Supreme Court defers to the Commission as the finder of fact and does not engage in weighing the evidence before it. Lewis v. L.B. Dynasty, Inc. (S.C. 2017) 419 S.C. 515, 799 S.E.2d 304. Workers’ Compensation 1939.3; Workers’ Compensation 1939.6

Claimant’s argument, that he was apprentice in non‑profit organization to rehabilitate former substance abusers, ex‑convicts, and homeless adults, and thus was entitled to workers’ compensation coverage for his neck and spinal injuries, was not preserved for appeal, where claimant raised argument for first time in reply brief and it was not ruled upon by appellate panel of Workers’ Compensation Commission. Simmons v. SC STRONG (S.C.App. 2013) 402 S.C. 166, 739 S.E.2d 631, rehearing denied, certiorari denied. Workers’ Compensation 1847

Worker’s Compensation Commission’s finding establishing a causal relationship between claimant’s physical injuries and her psychological injuries was inadequate in claimant’s action alleging injury as a result of exposure to herbicide, and required remand for a more specific finding of a causal connection. Pack v. State Dept. of Transp. (S.C.App. 2009) 381 S.C. 526, 673 S.E.2d 461. Workers’ Compensation 1529.1(2)

The Workers’ Compensation Commission’s failure to explain why it denied claimant’s claim of brain injury in action where claimant claimed multiple exposures to herbicide, and the absence of any findings to support the Commission’s denial, left the Appellate Court no way of evaluating the reasoning behind the Commission’s decision, requiring remand to allow the Commission to make those factual findings. Pack v. State Dept. of Transp. (S.C.App. 2009) 381 S.C. 526, 673 S.E.2d 461. Workers’ Compensation 1740; Workers’ Compensation 1949

An order of the Workers’ Compensation Commission reversing the issue of whether a claimant was required to elect pursuing a claim under Section 42‑9‑20 or Section 42‑9‑30 involved the merits of the case so as to be immediately appealable to the circuit court since the findings of fact and law by the hearing commissioner would become the law of the case, and due process requires that litigants receive notice of the issues to be met on trial, hearing, or appeal. Green v. City of Columbia (S.C.App. 1993) 311 S.C. 78, 427 S.E.2d 685.

An order of the full commission holding that an employee was not entitled to further workers’ compensation benefits was insufficient for appellate review where the facts showed that the employee (1) injured his knee on the job, (2) had been told that he did not have cartilage damage by the employer’s doctor, (3) agreed to a settlement for permanent disability based on this diagnosis, and (4) then found out from an independent doctor that he did have cartilage damage, but the commission failed to state the facts on which it relied to hold that the employee did not establish a change of condition or a mutual mistake; therefore, the order would be remanded for further factfinding. Brayboy v. Clark Heating Co., Inc. (S.C. 1991) 306 S.C. 56, 409 S.E.2d 767.

Although the exceptions to the single commissioner’s findings set forth by an employee in appealing to the full commission, were in violation of Supreme Court Rule 4, Section 6, the circuit court did not err in granting a review of the appeal where the issue sought to be raised by the exceptions was reasonably clear from the employee’s arguments, the issue was ruled on by the single commissioner, and the issue could readily be determined and was meritorious. Holston v. Allied Corp. (S.C.App. 1989) 300 S.C. 174, 386 S.E.2d 793.

**SECTION 42‑17‑60.** Conclusiveness of award; appeals; payment of compensation during appeal; accrual of interest.

The award of the commission, as provided in Section 42‑17‑40, if not reviewed in due time, or an award of the commission upon the review, as provided in Section 42‑17‑50, is conclusive and binding as to all questions of fact. However, either party to the dispute, within thirty days from the date of the award or within thirty days after receipt of notice to be sent by registered mail of the award, but not after, whichever is the longest, may appeal from the decision of the commission to the court of appeals. Notice of appeal must state the grounds of the appeal or the alleged errors of law. In case of an appeal from the decision of the commission on questions of law, the appeal does not operate as a supersedeas and, after that time, the employer is required to make weekly payments of compensation and to provide medical treatment ordered by the commission involved in the appeal or certification until the questions at issue have been fully determined in accordance with the provisions of this title. Interest accrues on an unpaid portion of the award at the legal rate of interest as established in Section 34‑31‑20(B) during the pendency of an appeal.

HISTORY: 1962 Code Section 72‑356; 1952 Code Section 72‑356; 1942 Code Section 7035‑63; 1936 (39) 1231; 1988 Act No. 677, Section 3, eff June 27, 1988; 1990 Act No. 439, Section 1, eff April 24, 1990; 2007 Act No. 111, Pt I, Section 30, eff July 1, 2007, applicable to injuries that occur on or after that date.

CROSS REFERENCES

Administrative hearings and proceedings, see Section 1‑23‑600.

Workers’ compensation awards are not subject to automatic stay upon service of a notice of appeal, see Rule 225, SCACR.

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1. In general

Generally, the reversal of a judgment has the effect of vacating the judgment and leaving the case standing as if no judgment had been rendered; thus, when an award of the Workers’ Compensation Commission is reversed by the Circuit Court it becomes of no effect and is no longer in existence. Moore v. North American Van Lines (S.C. 1995) 319 S.C. 446, 462 S.E.2d 275.

In a workers’ compensation action seeking the return of benefits paid, the employer’s right to reimbursement when a judgment has subsequently been reversed is not restricted; consequently, it is not error to allow the reimbursement of benefits erroneously paid without restriction. Moore v. North American Van Lines (S.C. 1995) 319 S.C. 446, 462 S.E.2d 275.

The single commissioner in a workers’ compensation proceeding did not err in reopening a case and allowing the claimant the opportunity to present additional testimony, since a single commission has similar discretion with regard to such matters as a trial judge, who himself has considerable latitude and discretion in such matters. Hallums v. Michelin Tire Corp. (S.C.App. 1992) 308 S.C. 498, 419 S.E.2d 235, rehearing denied, certiorari denied.

Section 42‑17‑10, which relates to compensation agreements between an employer and an employee, permits correction of the compensation rate at any time before the Workers’ Compensation Commission formally approves the rate of compensation. Once a single commissioner approves the allegedly erroneous rate, the memorandum becomes enforceable as if it were an order of the Commission. Thereafter, the proper remedy is a timely appeal to the full commission and then to the courts; the administrative remedy provided by Section 42‑17‑10 no longer applies. This limitation promotes finality of the Commission’s decisions and certainty as to the amount of compensation payable, and prevents the parties from reopening the issue of the amount of compensation long after the initial agreement has been settled. Lloyd v. AT & T Nassau Metals Corp. (S.C.App. 1989) 299 S.C. 207, 383 S.E.2d 257.

Appeal from single workers compensation commissioner’s decision cannot be taken directly to circuit court without first being reviewed by full commission. Janhrette v. Union Camp Paper Corp. (S.C. 1987) 293 S.C. 59, 358 S.E.2d 704. Workers’ Compensation 1804

It is plain from this section [Code 1962 Section 72‑356] that it was the intention of the legislature to provide for the disposition of a claim made to the Industrial Commission by the orderly process of a hearing before a single Commissioner; a review, by the full Commission, of the single Commissioner’s award; an appeal from an award by the full Commission to the court of common pleas; and an appeal from that court to the Supreme Court. Greer v. Greenville County (S.C. 1965) 245 S.C. 442, 141 S.E.2d 91. Workers’ Compensation 1804; Workers’ Compensation 1822; Workers’ Compensation 1954

It was the intent of the legislature to provide that the procedure on appeal should be akin to that of a court, as, for instance, an appeal from an inferior court to the court of common pleas, and an appeal from that court to the Supreme Court. Thus, the intention of the legislature was to provide for the disposition of a claim made to the Industrial Commission by the orderly process of a hearing before a single commissioner, or a deputy appointed by the full Commission; a review, by the full Commission, of the single commissioner’s award; an appeal from an award by the full Commission to the court of common pleas; and an appeal from the court of common pleas to the Supreme Court. Riddle v Fairforest Finishing Co. (1942) 198 SC 419, 18 SE2d 341. Walsh v. U. S. Rubber Co. (S.C. 1961) 238 S.C. 411, 120 S.E.2d 685.

Where it was contended that an appeal from the Commission should be treated the same as if it had come from a lower court it was held that upon consideration of the whole Act and its drastic departures from the common law which it displaced, the answer is patent that the procedure upon appeal must not be permitted to conflict with the novel substantive law which the Act contains. Schwartz v. Mount Vernon‑Woodberry Mills (S.C. 1945) 206 S.C. 227, 33 S.E.2d 517.

This section [Code 1962 Section 72‑356], Code 1962 Section 7‑301 and SC Const., Art 5, Section 15 (now Art 5, Section 7) providing for appeal to the circuit court from inferior courts, and decisions under them, are not pertinent to appeals from the Industrial Commission for the simple reason that the latter is not a court in that constitutional and statutory sense; and, by the same token, the authority of those decisions is not impinged by the construction and application of our Workmen’s Compensation Act to controversies within its sphere. Schwartz v. Mount Vernon‑Woodberry Mills (S.C. 1945) 206 S.C. 227, 33 S.E.2d 517.

This section [Code 1962 Section 72‑356] contains no authority for the full Commission to grant a hearing or receive further evidence following its opinion and award on a review of the hearing commissioner’s award. In re Crawford (S.C. 1944) 205 S.C. 72, 30 S.E.2d 841.

The clear intent of this whole Act is to provide a right of appeal, and the machinery for perfecting that appeal is found in this section [Code 1962 Section 72‑356] and Code 1962 Section 72‑355. Riddle v. Fairforest Finishing Co. (S.C. 1942) 198 S.C. 419, 18 S.E.2d 341.

Where employer made no objection in the courts below that the employee’s claim had not been filed during the allowed time and that the form of the award was incorrect, it was held that it was too late to bring these matters up in an appeal to the Supreme Court. King v. Wesner (S.C. 1941) 198 S.C. 49, 16 S.E.2d 289.

2. Construction and application

Statutory amendment to procedure for appealing decision of the Workers’ Compensation Commission did not apply where injury occurred before effective date of the amendment. Pee Dee Regional Transp. v. S.C. Second Injury Fund (S.C. 2007) 375 S.C. 60, 650 S.E.2d 464. Workers’ Compensation 69

3. Construction with other laws

Where provisions of the Administrative Procedures Act (APA) and the Workers Compensation Act conflict, the APA controls. Thus, a notice of appeal which failed to state the grounds or errors of law in support of the appeal as required by the APA, could not be amended after expiration of the 30‑day statutory period for filing the appeal under the APA. Pringle v. Builders Transport (S.C. 1989) 298 S.C. 494, 381 S.E.2d 731.

Where provisions of the Administrative Procedures Act (APA) and the Workers’ Compensation Act directly conflict, the APA controls. However, where the APA is silent, specific provisions of existing agency law retain their viability. Since the APA contains no express provisions regarding the proper county for judicial review which impliedly repealed the forum provisions of Section 42‑17‑60, that statute continues to govern judicial review of workers’ compensation decisions. Williams v. South Carolina Dept. of Wildlife (S.C. 1987) 295 S.C. 98, 367 S.E.2d 418.

Review provisions of S.C. Code Section 42‑17‑60 have been implicitly repealed with the enactment of the review provisions of the South Carolina Administrative Procedures Act (S.C. Code Section 1‑23‑38(g)). Lark v. Bi‑Lo, Inc. (S.C. 1981) 276 S.C. 130, 276 S.E.2d 304.

4. Payments pending appeal

For earlier cases treating effect of appeal on payment of compensation, see McDonald v Palmetto Theaters (1941) 196 SC 38, 11 SE2d 444. Miller v Springs Cotton Mills (1954) 225 SC 326, 82 SE2d 458. Godfrey v Mills Mill (1959) 234 SC 401, 108 SE2d 587. Godfrey v Mills Mill (1959) 234 SC 442, 108 SE2d 832. Sylvan v St. Paul‑Mercury Indem. Co. (1953, DC SC) 116 F Supp 601, rev in (CA4 SC) 213 F2d 137.

The thirty‑day limit of stay or supersedeas applies to appeals from the Commission to the court of common pleas. McDonald v Palmetto Theaters (1941) 196 SC 38, 11 SE2d 444. Cord v E. H. Hines Const. Co. (1951) 220 SC 356, 67 SE2d 677.

Appeal taken from trial court’s order reversing denial of workers’ compensation benefits did not automatically stay claimant’s entitlement to payment of benefits, therefore, trial court did not lack authority to compel payment of benefits while appeal was pending. Johnson v. Sonoco Products Co. (S.C. 2009) 381 S.C. 172, 672 S.E.2d 567. Workers’ Compensation 1894

The purpose of this section [Code 1962 Section 72‑356] is to provide some means of subsistence for the injured employee pending determination of the employer’s appeal, and that purpose would be defeated if the employer, who is required to make payments pending decision by the circuit court of his appeal from the Commission’s award, should be able to discontinue them after that court has affirmed it and until his appeal from that judgment has been disposed of. Case v. Hermitage Cotton Mills (S.C. 1960) 236 S.C. 515, 115 S.E.2d 57.

The provisions of Code 1962 Sections 7‑412 and 7‑418, being supersedeas provisions of the general law relating to appeals, must yield to those of this section [Code 1962 Section 72‑356], a subsequent law, special in nature, with which they are in conflict. Case v. Hermitage Cotton Mills (S.C. 1960) 236 S.C. 515, 115 S.E.2d 57.

If the Commission should deny the claimant compensation, and upon his appeal the circuit court should reverse the Commission and hold his claim compensable, the weekly payments to be made by the employer pending determination of an appeal from that judgment to the Supreme Court should commence from the date of the circuit court’s judgment and should not be calculated retroactively from the date of the Commission’s decision. Case v. Hermitage Cotton Mills (S.C. 1960) 236 S.C. 515, 115 S.E.2d 57.

In the ordinary, nontechnical sense, the award is still “under appeal” when, after its affirmance by the circuit court, appeal from such affirmance is pending. Case v. Hermitage Cotton Mills (S.C. 1960) 236 S.C. 515, 115 S.E.2d 57.

This section [Code 1962 Section 72‑356] does not expressly or by necessary implication limit the time during which weekly payments awarded by the Commission must be made to the period commencing with the expiration of the thirty‑day supersedeas and ending with the circuit court’s judgment of affirmance. Case v. Hermitage Cotton Mills (S.C. 1960) 236 S.C. 515, 115 S.E.2d 57.

The thirty‑day supersedeas provision of this section [Code 1962 Section 72‑356] should be construed as requiring weekly payments provided for in the award of the Commission to continue pending determination of the employer’s appeal from a judgment of the circuit court affirming the Commission’s award; as this section [Code 1962 Section 72‑356] is indicative of legislative intent, in furtherance of the beneficent purpose of workmen’s compensation, to assure to an employee, whose disability has been adjudged compensable by the Commission, financial aid to the extent of such weekly payments (subject to the thirty‑day supersedeas), so long as the award shall remain in force. Case v. Hermitage Cotton Mills (S.C. 1960) 236 S.C. 515, 115 S.E.2d 57.

Since no right to supersedeas exists except by virtue of express statutory authorization, and since such right, in workmen’s compensation cases, is derived only from this section [Code 1962 Section 72‑356], the express provision herein that after the expiration of thirty days following his appeal from the Commission’s award, the employer shall be required to make payment until the questions at issue shall have been fully determined means that there shall be no supersedeas of the Commission’s award, or of a circuit court judgment affirming it, except the thirty‑day supersedeas that under this section [Code 1962 Section 72‑356] is automatically effected by the appeal to the circuit court. Case v. Hermitage Cotton Mills (S.C. 1960) 236 S.C. 515, 115 S.E.2d 57.

The requirement to make payment refers to the award not judgment, and the use of the word “until” connotes when or the time when the question is fully determined. If it was the intention of the legislature that such payment was to be only after final judgment was entered, it could have said so, and there would have been no occasion for the use of such language. Bagwell v. Ernest Burwell, Inc. (S.C. 1955) 227 S.C. 168, 87 S.E.2d 583.

The legislature intended that the weekly payments ordered in an award are to be made until the question at issue is fully determined upon appeal. Bagwell v. Ernest Burwell, Inc. (S.C. 1955) 227 S.C. 168, 87 S.E.2d 583.

The fact that an appeal shall only act as a supersedeas for a period of thirty days does not violate the Constitution as to denial of equal protection of the laws. Bannister v. Shepherd (S.C. 1939) 191 S.C. 165, 4 S.E.2d 7.

5. Who may receive payments

Once an award of the Industrial Commission is issued in favor of the claimant, thirty days thereafter the employee becomes a privileged suitor and occupies a position similar to that of a wife suing for alimony and attorney’s fees. Bagwell v. Ernest Burwell, Inc. (S.C. 1955) 227 S.C. 168, 87 S.E.2d 583.

And he may receive temporary benefits under the Workmen’s Compensation Act, even though he may eventually lose his case on its merits on appeal. Bagwell v. Ernest Burwell, Inc. (S.C. 1955) 227 S.C. 168, 87 S.E.2d 583.

Where it was contended that if this section [Code 1962 Section 72‑356] should require the payment of the award pending the appeal, that the legislature intended the payment to be made to some one other than the plaintiff, it was held that this contention was untenable because if the legislature intended any such payment, it would have so stated. Bannister v. Shepherd (S.C. 1939) 191 S.C. 165, 4 S.E.2d 7.

6. Amount of payments

Since the Commission’s award includes in many instances, in addition to weekly benefits, other payments, such as for disfigurement, medical expenses, etc., to be made to or for the account of the injured employee, this section [Code 1962 Section 72‑356] requires payment after the expiration of the thirty‑day supersedeas period and during the pendency of the employer’s appeal to the circuit court (and, in case of affirmance there and appeal from that judgment, during the pendency of that appeal and until its final determination) not of such additional amounts, but only of the weekly compensation accruing after the date of the Commission’s award. Case v. Hermitage Cotton Mills (S.C. 1960) 236 S.C. 515, 115 S.E.2d 57.

7. Estoppel

Res judicata does not operate to preclude dependent’s right to workmen’s compensation benefits, as a result of adjudication of single commissioner, where dependent had no notice or knowledge of initial hearing, where dependent’s claim for dependency benefits was timely filed, and where dependent was not party to original hearing and was in no way represented therein. Airco, Inc. v. Hollington (S.C. 1977) 269 S.C. 152, 236 S.E.2d 804. Workers’ Compensation 1792

8. Jurisdiction

In Spearman v F. S. Royster Guano Co. (1938) 188 SC 393, 199 SE 530, the court held that the courts have jurisdiction to review awards of the Industrial Commission only where there is no substantial evidence to support the findings of fact of the Commission, or, in other words, that the court has jurisdiction identical with the jurisdiction of the Supreme Court in jury cases in determining whether a verdict should have been directed. Spearman v F. S. Royster Guano Co. (1938) 188 SC 393, 199 SE 530. Ham v Mullins Lumber Co. (1940) 193 SC 66, 7 SE2d 712. Krell v South Carolina State Highway Dept. (1961) 237 SC 584, 118 SE2d 322. Krell v South Carolina State Highway Dept. (1961) 237 SC 584, 118 SE2d 322.

The circuit court, and the Supreme Court, on the appeal of either party to the proceeding, has both the power and the duty to consider all the evidence in the record, and find therefrom the jurisdictional facts, without regard to the finding of such facts, by the Commission. Watson v Wannamaker & Wells (1948) 212 SC 506, 48 SE2d 447. Horton v Baruch (1950) 217 SC 48, 59 SE2d 545. Brown v Moorhead Oil Co. (1962) 239 SC 604, 124 SE2d 47.

As to disputed facts which do not go to the jurisdiction, the Supreme Court is bound by the finding of the Commission, but where the only question presented is whether or not the jurisdictional fact exists entitling the claimant to be heard before the Commission, the Supreme Court has the right to review the action of the Commission, even to the extent of finding the fact to be other than the Commission found it. McDowell v Stilley Plywood Co. (1947) 210 SC 173, 41 SE2d 872. Tedars v Savannah River Veneer Co. (1943) 202 SC 363, 25 SE2d 235 147 ALR 914. Gordon v Hollywood‑Beaufort Package Corp. (1948) 213 SC 438, 49 SE2d 718. Knight v Shepherd (1939) 191 SC 452, 4 SE2d 906.

A civil cover sheet, which was not required by statute, was not essential to invoke the jurisdiction of circuit court in an appeal from decision of the Appellate Panel of Workers’ Compensation Commission; cover sheet was required for the purposes of administration and was at most a ministerial requirement. Paschal v. Price (S.C.App. 2008) 380 S.C. 419, 670 S.E.2d 374, rehearing denied, certiorari granted, affirmed 392 S.C. 128, 708 S.E.2d 771. Workers’ Compensation 1872

In a workers’ compensation action seeking the return of benefits paid through, inter alia, a motion for restitution, the trial court did not err in awarding restitution without allowing an offset of any benefits ultimately determined to be owed under Indiana law; it would be improper for the court to order an offset or deduction of benefits paid in Indiana, since the South Carolina Court had no jurisdiction over the Indiana claim. Moore v. North American Van Lines (S.C. 1995) 319 S.C. 446, 462 S.E.2d 275.

Section 42‑17‑60 grants the court of common pleas throughout the state subject matter jurisdiction to hear appeals from orders of the Workers’ Compensation Commission; the case would be reinstated and remanded to determine proper venue. Dove v. Gold Kist, Inc. (S.C. 1994) 314 S.C. 235, 442 S.E.2d 598.

The hearing commissioner in a workers’ compensation proceeding retained jurisdiction until he made his report and issued his order where he permitted a deposition to be taken after the hearing, thus effectively adjourning the hearing until he had examined the deposition. Hallums v. Michelin Tire Corp. (S.C.App. 1992) 308 S.C. 498, 419 S.E.2d 235, rehearing denied, certiorari denied. Workers’ Compensation 1687

Lack of subject matter jurisdiction cannot be waived and an appellate court may raise it ex mero motu. McCreery v. Covenant Presbyterian Church (S.C.App. 1989) 299 S.C. 218, 383 S.E.2d 264, reversed 303 S.C. 271, 400 S.E.2d 130. Appeal And Error 23

Where the worker’s injury occurred in Lexington County and the employer’s principal place of business was in Lexington County, the Richland County circuit court had no jurisdiction over the worker’s appeal from the ruling of the Industrial Commission, and lacked even limited jurisdiction or authority to transfer the appeal to Lexington County. Chitty v. Allied Chemical Co. (S.C. 1985) 285 S.C. 106, 328 S.E.2d 476.

Appeal to court of common pleas in county in which Massachusetts corporation maintains branch sale office is without jurisdictional basis where accident occurred in another county, since “principal office” and place “employer resides” is in Massachusetts. Hedgepath v. Stanley Home Products, Inc. (S.C. 1975) 265 S.C. 248, 217 S.E.2d 782.

The issue of whether the claimant was an employee at the time he was injured was jurisdictional, so the Commission’s conclusion was subject to judicial review even though supported by evidence. Chavis v. Watkins (S.C. 1971) 256 S.C. 30, 180 S.E.2d 648.

Where the issue is not jurisdictional, its determination by the Commission, being adequately supported by the evidence, is conclusive. Addison v. Dixie Chevrolet Co. (S.C. 1965) 246 S.C. 86, 142 S.E.2d 442.

Where the Commission’s jurisdiction is challenged upon the ground that the employer is not subject to the provisions of the Workmen’s Compensation Act, the court is not bound by the Commission’s findings of fact upon which its jurisdiction is dependent; the court has both the power and the duty to consider all of the evidence in the record and reach its own conclusion therefrom as to the jurisdictional issue. Addison v. Dixie Chevrolet Co. (S.C. 1965) 246 S.C. 86, 142 S.E.2d 442. Workers’ Compensation 1939.11(3)

When the plaintiffs appealed to the court of common pleas from the adverse ruling of the Commission, such Commission had no further jurisdiction over the controversy pending the appeal. Greer v. Greenville County (S.C. 1965) 245 S.C. 442, 141 S.E.2d 91.

In determining jurisdictional questions, it must be kept in mind that the basic purpose of the Workmen’s Compensation Act is the inclusion of employers and employees within its coverage and not their exclusion, and doubts of jurisdiction will be resolved in favor of inclusion rather than exclusion. However, a construction should not be adopted that does violence to the specific provisions of the Act. White v. J. T. Strahan Co. (S.C. 1964) 244 S.C. 120, 135 S.E.2d 720. Workers’ Compensation 1177

Ordinarily, findings of fact by the Industrial Commission based upon competent evidence are conclusive on appeal, but in determining whether or not the Commission had jurisdiction of the claim presented, the Supreme Court is not bound by a finding of fact by the Commission. The Supreme Court, and the circuit court have both the power and duty to review the entire record and find therefrom the jurisdictional facts, without regard to the conclusion of the Commission on such issue, and will decide the jurisdictional question in accord with the preponderance of the evidence. White v. J. T. Strahan Co. (S.C. 1964) 244 S.C. 120, 135 S.E.2d 720.

Findings of fact by Commission relative to jurisdiction are not conclusive on appeal and both Supreme Court and circuit court have power and duty to review the record and decide jurisdictional question in accord with preponderance of the evidence. Allen v. Phinney Oil Co. (S.C. 1962) 241 S.C. 173, 127 S.E.2d 448. Workers’ Compensation 1939.11(3)

Jurisdiction cannot be acquired by Commission by estoppel. Allen v. Phinney Oil Co. (S.C. 1962) 241 S.C. 173, 127 S.E.2d 448.

In determining jurisdictional questions basic purpose of this Act is inclusion of employers and employees within its coverage and not their exclusion and doubts of jurisdiction will be resolved in favor of inclusion rather than exclusion; but courts are without authority to enlarge meaning of terms of the act or extend by construction its scope so as to include persons not embraced by its terms and one who seeks to avail himself of the act must come within its terms. Allen v. Phinney Oil Co. (S.C. 1962) 241 S.C. 173, 127 S.E.2d 448.

Thus, the trial court should have resolved the conflicts in the evidence and determined the fact of whether a contractor‑defendant was performing a part of the “trade, business or occupation” of the owner‑defendant and, therefore, whether employee’s remedy was exclusively under the Workmen’s Compensation Law. Adams v. Davison‑Paxon Co. (S.C. 1957) 230 S.C. 532, 96 S.E.2d 566.

Where the jurisdiction of the Industrial Commission to hear and consider a claim for compensation is challenged by an employer on the ground that such employer is not subject to the provisions of the Act, the findings of fact made by the Commission on which its jurisdiction is dependent, are not conclusive. Holland v. Georgia Hardwood Lumber Co. (S.C. 1949) 214 S.C. 195, 51 S.E.2d 744. Administrative Law And Procedure 683; Administrative Law And Procedure 795; Workers’ Compensation 1939.11(3); Workers’ Compensation 1969

The Industrial Commission’s awards are not damages as such are known to the law; it knows no torts; its jurisdiction, which is purely statutory, depends upon contract. Schwartz v. Mount Vernon‑Woodberry Mills (S.C. 1945) 206 S.C. 227, 33 S.E.2d 517.

Court has jurisdiction identical with the jurisdiction of the Supreme Court in jury cases in determining whether a verdict should have been directed. Spearman v. F.S. Royster Guano Co. (S.C. 1938) 188 S.C. 393, 199 S.E. 530.

9. Interest and penalties

Claimant’s entitlement to interest on award of workers’ compensation benefits did not begin from date single Workers’ Compensation commissioner awarded benefits, but from 30 days following date that trial court reversed decision by Workers’ Compensation Commission that reversed single commissioner’s decision and denied benefits. Johnson v. Sonoco Products Co. (S.C. 2009) 381 S.C. 172, 672 S.E.2d 567. Workers’ Compensation 1041

10. Orders appealable

Employer was not required to immediately appeal from decision of Appellate Panel of the Workers’ Compensation Commission reversing decision of a single commissioner and remanding in order to avoid findings of Appellate Panel from becoming law of the case; statute governing appeals from the Commission permitted an aggrieved party to appeal an intermediate order, but did not require a party to do so, and employer appealed from decision of single commissioner on remand. Price v. Peachtree Elec. Services, Inc. (S.C.App. 2011) 396 S.C. 403, 721 S.E.2d 461, rehearing denied, certiorari granted, affirmed as modified 405 S.C. 455, 748 S.E.2d 229. Workers’ Compensation 1764

If the parties to the workers’ compensation dispute fail to timely appeal the final award of the full commission, then its order is conclusive and binding as to all questions of fact. Gattis v. Murrells Inlet VFW No. 10420 (S.C.App. 2003) 353 S.C. 100, 576 S.E.2d 191, rehearing denied, certiorari denied. Workers’ Compensation 1790

A ruling by the Workers’ Compensation Commission that a claimant could withdraw her request for a hearing, over her employer’s objection, without effecting a dismissal of her underlying claim, was interlocutory and unappealable. Walker v. Springs Industries, Inc. (S.C.App. 1989) 298 S.C. 249, 379 S.E.2d 729.

Decision of single commissioner cannot be taken directly to Circuit Court on appeal, without first being reviewed by full commission. Janhrette v. Union Camp Paper Corp. (S.C. 1987) 293 S.C. 59, 358 S.E.2d 704. Workers’ Compensation 1804

Where an order of the Industrial Commission remanding a case to the hearing commissioner was not a final one, did not allow or deny compensation and did not affect the merits, it was not appealable prior to the Commission’s final determination of the hearing commissioner’s award. Chastain v. Spartan Mills (S.C. 1955) 228 S.C. 61, 88 S.E.2d 836. Workers’ Compensation 1834

An appeal to the court of common pleas will not lie from an interlocutory order of the Commission unless such order affects the merits. Chastain v. Spartan Mills (S.C. 1955) 228 S.C. 61, 88 S.E.2d 836. Workers’ Compensation 1834

An order of the Industrial Commission denying an employer’s motion for a physical examination of the claimant pursuant to Code 1962 Section 72‑307 is appealable notwithstanding that there has been no award by the Commission. Cord v. E. H. Hines Const. Co. (S.C. 1951) 220 S.C. 356, 67 S.E.2d 677.

11. Notice of appeal

Petition for rehearing was inapplicable to matters before the Appellate Panel of the Workers’ Compensation Commission, and, thus, workers’ compensation claimant’s petition for rehearing on Panel’s limitations‑based dismissal of his claim for compensation could not toll the time in which claimant was required to file petition for judicial review of the Panel’s decision. Rhame v. Charleston County School Dist. (S.C.App. 2012) 399 S.C. 477, 732 S.E.2d 202, rehearing denied, certiorari granted, reversed 412 S.C. 273, 772 S.E.2d 159, on remand 415 S.C. 162, 781 S.E.2d 151, certiorari dismissed. Workers’ Compensation 1802

Workers’ compensation claimant’s notice of appeal, which stated that Commission erred in finding as a fact and concluding as a matter of law that claimant was not entitled to benefits, was sufficient to comply with statutory requirement that notice of appeal to circuit court state grounds of appeal or alleged errors of law, since Commission’s findings and conclusions only addressed issue of statute of limitations. White v. Medical University of South Carolina (S.C.App. 2003) 355 S.C. 560, 586 S.E.2d 157, rehearing denied. Workers’ Compensation 1884

The circuit court lacked jurisdiction, based on the insufficiency of the appeal, over a petition for review of a commission’s ruling pursuant to the Administrative Procedures Act, Sections 1‑23‑320 et seq., where an injured worker set forth 3 exceptions but 2 of them, that the “decision of the commission failed to address all the exceptions and points of law brought before the commission” and that “upon such further exception as will hereafter be served,” were so vague that they did not adequately specify grounds for appeal. Solomon v. W.B. Easton, Inc. (S.C.App. 1992) 307 S.C. 518, 415 S.E.2d 841.

12. Preservation of issue for review

Employer failed to preserve for appellate review challenge to trial court’s award of interest to claimant and assessment of ten percent penalty in context of claimant’s motion to compel payments of workers’ compensation benefits awarded to claimant when trial court reversed Workers’ Compensation Commission’s denial of benefits; matter of interest and penalty were squarely before trial court, employer’s pre‑hearing response to motion did not raise issue, and employer failed to include copy of transcript of hearing in record on appeal. Johnson v. Sonoco Products Co. (S.C. 2009) 381 S.C. 172, 672 S.E.2d 567. Workers’ Compensation 1041; Workers’ Compensation 1042.29

By raising issue of an alleged hip injury on form requesting full Workers’ Compensation Commission review following a decision of the hearing commissioner, claimant was not precluded from raising the issue on appeal to the circuit court when Commission failed to explicitly rule on the issue, considering that she could not have made a motion for the Commission to reconsider its order. Nettles v. Spartanburg School Dist. #7 (S.C.App. 2000) 341 S.C. 580, 535 S.E.2d 146, rehearing denied. Workers’ Compensation 1859

The finding by a workers’ compensation commissioner that a truck driver was an independent contractor, without a corresponding finding that the driver had elected to receive benefits pursuant to Section 42‑1‑130, implicitly held that the driver was not a statutory employee of the contractor who had hired him, and thus the issue of his status as a statutory employee was preserved for review. Smith v. Squires Timber Co. (S.C. 1993) 311 S.C. 321, 428 S.E.2d 878, rehearing denied.

Employee waived on appeal issue of whether he was a “covered contractor” and thus not subject to “detailed instructions and paternalistic discipline” from his employer, in workers’ compensation case, as employee failed to raise issue to Worker’s Compensation Commission or to trial court. Pratt v. Morris Roofing, Inc. (S.C.App. 2003) 353 S.C. 339, 577 S.E.2d 475, rehearing denied, certiorari granted, affirmed as modified 357 S.C. 619, 594 S.E.2d 272. Workers’ Compensation 1847

13. Scope of review, generally

Findings of the Industrial Commission are binding on both the Supreme Court and the circuit court on appeal if there is any competent evidence to support them. Clements v Greenville County (1965) 246 SC 20, 142 SE2d 212. Arnold v Benjamin Booth Co. (1971) 257 SC 337, 185 SE2d 830.

The function of the Commission as to whether the evidence is sufficient is like that of a jury in actions of law. Westbury v Heslep & Thomason Co. (1942) 199 SC 124, 18 SE2d 668. Holland’s Estate v Valley Falls Mill (1938) 188 SC 364, 199 SE 412. Cole’s Next of Kin v Anderson Cotton Mills (1939) 191 SC 458, 4 SE2d 908 (disapproved on other grounds Peagler v Atlantic C. L. R. Co., 232 SC 274, 101 SE2d 821). Windham v Florence (1952) 221 SC 350, 70 SE2d 553.

The question of whether there is a sufficiency of evidence is strictly a matter of fact, and the findings of the Commission thereabout are final. Phillips v Dixie Stores, Inc. (1938) 186 SC 374, 195 SE 646. Cokeley v Robert Lee, Inc. (1941) 197 SC 157, 14 SE2d 889. Ervin v Myrtle Grove Plantation (1945) 206 SC 41, 32 SE2d 877. Scott v Havnear Motor Co. (1955) 226 SC 580, 86 SE2d 475.

Court of Appeals erred in substituting its view of the evidence for that of the Workers’ Compensation Commission. Sharpe v. Case Produce, Inc. (S.C. 1999) 336 S.C. 154, 519 S.E.2d 102. Workers’ Compensation 1969

Possibility of drawing two inconsistent conclusions from the evidence does not prevent the Workers’ Compensation Commission’s finding from being supported by substantial evidence. Sharpe v. Case Produce, Inc. (S.C. 1999) 336 S.C. 154, 519 S.E.2d 102. Workers’ Compensation 1939.3

In a workers’ compensation action, the possibility of drawing 2 inconsistent conclusions from the evidence does not prevent the Workers’ Compensation Commission’s findings from being supported by substantial evidence. O’Banner v. Westinghouse Elec. Corp. (S.C.App. 1995) 319 S.C. 24, 459 S.E.2d 324. Workers’ Compensation 1939.7

The decision of the Workers’ Compensation Commission may be reversed only if substantial rights of the claimant have been prejudiced because the administrative findings are clearly erroneous in view of the substantial evidence on the record as a whole. Mullinax v. Winn‑Dixie Stores, Inc. (S.C.App. 1995) 318 S.C. 431, 458 S.E.2d 76, rehearing denied, appeal dismissed. Workers’ Compensation 1946

Judicial review of the Commission’s order is limited to determining whether the findings are supported by substantial evidence. Substantial evidence is that evidence which would allow reasonable minds to reach the conclusion that the full commission reached; it is something less than the weight of the evidence, and the possibility of drawing 2 inconsistent conclusions from the evidence does not prevent the Commission’s finding from being supported by substantial evidence. Camp v. Spartan Mills (S.C.App. 1990) 302 S.C. 348, 396 S.E.2d 121. Workers’ Compensation 1939.4(4)

On review of the findings supporting an agency decision such as a finding of total disability made by the Industrial Commission, the Court of Appeals is limited by Section 1‑23‑380(g)(5) to a determination of whether the Commission’s findings, inferences, conclusions or decisions are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. Hanks v. Blair Mills, Inc. (S.C.App. 1985) 286 S.C. 378, 335 S.E.2d 91. Administrative Law And Procedure 791

On review of the findings supporting an agency decision such as a finding of total disability made by the Industrial Commission, the Court of Appeals is limited by Section 1‑23‑380(g)(5) to a determination of whether the Commission’s findings, inferences, conclusions or decisions are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. Hanks v. Blair Mills, Inc. (S.C.App. 1985) 286 S.C. 378, 335 S.E.2d 91. Administrative Law And Procedure 791

The decision of the Industrial Commission in a workers’ compensation case will not be overturned by the circuit court or the Supreme Court unless clearly erroneous in view of the substantial evidence in the record. However, where the evidence supporting a compensable injury was overwhelming, and there was no evidence in the record to support the decision of the Industrial Commission, the circuit court properly reversed a ruling by the Industrial Commission denying benefits. Massey v. W.R. Grace & Co. (S.C. 1985) 286 S.C. 434, 334 S.E.2d 122.

The decision of the Industrial Commission in a workers’ compensation case will not be overturned by the circuit court or the Supreme Court unless clearly erroneous in view of the substantial evidence in the record. However, where the evidence supporting a compensable injury was overwhelming, and there was no evidence in the record to support the decision of the Industrial Commission, the circuit court properly reversed a ruling by the Industrial Commission denying benefits. Massey v. W.R. Grace & Co. (S.C. 1985) 286 S.C. 434, 334 S.E.2d 122.

In a Workers’ Compensation case, the scope of the Court of Appeals’ review of the Commission is to determine whether there is substantial evidence of record to support the findings of the Commission. Holcombe v. Dan River Mills/Woodside Div. (S.C.App. 1985) 286 S.C. 223, 333 S.E.2d 338. Workers’ Compensation 1939.4(4)

Supreme Court’s scope of review is same as Circuit Court’s on appeal from award of compensation by Industrial Commission and is limited to determination of whether competent evidence can be found in record to support Commission’s findings. Glover v. Rhett Jackson Co. of Bush River Road (S.C. 1980) 274 S.C. 644, 267 S.E.2d 77. Workers’ Compensation 1939.4(3)

Scope of review in workmen’s compensation cases is limited to whether there is any competent evidence to support the findings made by the Industrial Commission. Kinsey v. Champion Am. Service Center (S.C. 1977) 268 S.C. 177, 232 S.E.2d 720.

Reviewing courts are bound by the conclusions of the Industrial Commission if there is evidence to support the finding. Byers v. Mount Vernon Mills, Inc. (S.C. 1977) 268 S.C. 68, 231 S.E.2d 699.

Where the findings of causation by the Commission were based upon the testimony of claimant and the observable facts and circumstances in evidence, the inquiry of the Supreme Court then is whether these facts and circumstances are sufficient to sustain the finding or whether the issue was so complicated as to require medical testimony for its determination. Rollins v. Wunda Weve Carpet Co. (S.C. 1970) 255 S.C. 1, 177 S.E.2d 5.

The order of the Commission must be construed as a whole. Rollins v. Wunda Weve Carpet Co. (S.C. 1970) 255 S.C. 1, 177 S.E.2d 5.

It is not the Supreme Court’s duty to weigh the testimony but only to determine whether the record contains competent evidence to support the findings of the Industrial Commission. Kay v. South Carolina Public Service Authority (S.C. 1965) 246 S.C. 168, 143 S.E.2d 130. Workers’ Compensation 1969

In determining whether a specific finding in an order of the Industrial Commission is one of law or fact, such finding must be construed in connection with the entire order in the light of the issues to be decided. Rhodes v. Guignard Brick Works (S.C. 1965) 245 S.C. 304, 140 S.E.2d 487. Workers’ Compensation 1761

The limit of the inquiry which the circuit court and the Supreme Court is permitted to make is whether there is any evidence reasonably tending to support the conclusions of the Commission. Gosnell v. Bryant (S.C. 1962) 240 S.C. 215, 125 S.E.2d 405. Workers’ Compensation 1939.4(2)

14. Review as to findings of fact

A conclusion by the Industrial Commission by way of reasonable inference from the evidence is a finding of fact. Windham v Florence (1952) 221 SC 350, 70 SE2d 553. Rhodes v Guignard Brick Works (1965) 245 SC 304, 140 SE2d 487.

The Supreme Court and the circuit court, both being appellate courts in workmen’s compensation matters, can only review the facts to determine whether or not there is any competent evidence to support the findings of the fact‑finding body. Jones v Anderson Cotton Mills (1944) 205 SC 247, 31 SE2d 447. Burnett v Appleton Co. (1946) 208 SC 53, 37 SE2d 269. Schwartz v Mt. Vernon‑Woodberry Mills, Inc. (1945) 206 SC 227, 33 SE2d 517. Lewis v Hamilton Veneer Co. (1945) 206 SC 349, 34 SE2d 220. Sullivan’s Next of Kin v Greenville Auto Sales (1946) 208 SC 68, 36 SE2d 801. Bailey v Santee River Hardwood Co. (1944) 205 SC 433, 32 SE2d 365. Lanford v Clinton Cotton Mills (1944) 204 SC 423, 30 SE2d 36. Anderson v Campbell Tile Co. (1943) 202 SC 54, 24 SE2d 104. Haynes v Ware Shoals Mfg. Co. (1941) 198 SC 75, 15 SE2d 846. Pate v Plymouth Mfg. Co. (1941) 198 SC 159, 17 SE2d 146. Green v Bennettsville (1941) 197 SC 313, 15 SE2d 334. Reeves v Carolina Foundry & Machine Works (1940) 194 SC 403, 9 SE2d 919. Raley v Camden (1952) 222 SC 303, 72 SE2d 572. Price v B. F. Shaw Co. (1953) 224 SC 89, 77 SE2d 491. Gurley v Mills Mill (1954) 225 SC 46, 80 SE2d 745. Leonard v Georgetown County (1956) 230 SC 388, 95 SE2d 777. Brady v Sacony of St. Matthews (1957) 232 SC 84, 101 SE2d 50. Walker v City Motor Car Co. (1958) 232 SC 392, 102 SE2d 373. Fowler v Abbott Motor Co. (1960) 236 SC 226, 113 SE2d 737. Steed v Mt. Pleasant Seafood Co. (1960) 236 SC 253, 113 SE2d 827. Glover v Columbia Hospital of Richland County (1960) 236 SC 410, 114 SE2d 565. Walsh v U. S. Rubber Co. (1961) 238 SC 411, 120 SE2d 685. Packer v Corbett Canning Co. (1961) 238 SC 431, 120 SE2d 398. Drake v Raybestos‑Manhattan, Inc. (1962) 241 SC 116, 127 SE2d 288. Skipper v Marlowe Mfg. Co. (1963) 242 SC 486, 131 SE2d 524.

The Supreme Court is bound by the findings of fact by the Industrial Commission, if there is any testimony from which a reasonable inference can be drawn to sustain its findings of fact. Hamilton v Little (1941) 197 SC 434, 15 SE2d 662. Cokeley v Robert Lee, Inc. (1941) 197 SC 157, 14 SE2d 889. Henderson v Graniteville Co. (1941) 197 SC 420, 15 SE2d 637.

While a finding of fact by the Industrial Commission will be upheld if there is any evidence on which it can rest, it must be founded on evidence, and cannot rest on surmise, conjecture or speculation. Rudd v Fairforest Finishing Co. (1939) 189 SC 188, 200 SE 727. Buckman v International Agr. Corp. (1941) 196 SC 153, 13 SE2d 133. Owens v Ocean Forest Club, Inc. (1941) 196 SC 97, 12 SE2d 839. Hill v Skinner (1940) 195 SC 330, 11 SE2d 386. Edge v Dunean Mills (1943) 202 SC 189, 24 SE2d 268. Mack v Branch, No. 12 Post Exchange (1945) 207 SC 258, 35 SE2d 838. Willard v Commissioners of Public Works (1951) 219 SC 477, 65 SE2d 874. Malphrus v State Com. of Forestry & Workmen’s Compensation Fund (1952) 221 SC 75, 69 SE2d 70. Windham v Florence (1952) 221 SC 350, 70 SE2d 553. Hopper v Firestone Stores (1952) 222 SC 143, 72 SE2d 71. Raley v Camden (1952) 222 SC 303, 72 SE2d 572. Price v B. F. Shaw Co. (1953) 224 SC 89, 77 SE2d 491. Wynn v Peoples Natural Gas Co. (1961) 238 SC 1, 118 SE2d 812.

Although it is logical for the full Workers’ Compensation Commission, which did not have the benefit of observing the witnesses, to give weight to the single commissioner’s opinion, the full Commission is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the single commissioner. Muir v. C.R. Bard, Inc. (S.C.App. 1999) 336 S.C. 266, 519 S.E.2d 583, rehearing denied, certiorari denied. Workers’ Compensation 1704

In deciding whether substantial evidence supports a finding of causation in workers’ compensation case, it is appropriate to consider both the lay and expert evidence. Sharpe v. Case Produce, Inc. (S.C. 1999) 336 S.C. 154, 519 S.E.2d 102. Workers’ Compensation 1939.4(4)

Workers’ Compensation Commission’s decision must be affirmed if the factual findings are supported by substantial evidence in the record, and “substantial evidence” is that evidence which, in considering the record as a whole, would allow reasonable minds to reach the conclusion the Commission reached. Sharpe v. Case Produce, Inc. (S.C. 1999) 336 S.C. 154, 519 S.E.2d 102. Workers’ Compensation 1939.4(4)

In appeal from Workers’ Compensation Commission, Court of Appeals may not substitute its judgment for that of Commission as to weight of the evidence on questions of fact, but may reverse where the decision is affected by error of law. Hamilton v. Bob Bennett Ford (S.C.App. 1999) 336 S.C. 72, 518 S.E.2d 599, rehearing denied, certiorari granted in part, affirmed as modified 339 S.C. 68, 528 S.E.2d 667. Workers’ Compensation 1969

“Substantial evidence,” as required for affirmation of findings of fact made by the South Carolina Workers’ Compensation Commission, is not a mere scintilla of evidence, but evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the agency reached. Tiller v. National Health Care Center of Sumter (S.C. 1999) 334 S.C. 333, 513 S.E.2d 843, rehearing denied. Workers’ Compensation 1939.4(4)

In the review of a finding of the Workers’ Compensation Commission, the reviewing court may not make findings of fact as to basic issues of liability for compensation, where, to do so, would impose upon the court the function of determining such facts from conflicting evidence. Fox v. Newberry County Memorial Hosp. (S.C. 1995) 319 S.C. 278, 461 S.E.2d 392. Workers’ Compensation 1939.11(9)

The “substantial evidence” required to support the factual findings of the Workers’ Compensation Commission is not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached in order to justify its action. Mullinax v. Winn‑Dixie Stores, Inc. (S.C.App. 1995) 318 S.C. 431, 458 S.E.2d 76, rehearing denied, appeal dismissed. Workers’ Compensation 1939.4(4)

The Commission sits in lieu of a jury and neither the circuit court nor the Supreme Court may interfere with its findings of fact unless there is an absence of evidence to sustain the findings of the Commission. Oglesby v. Greenville YWCA (S.C. 1968) 250 S.C. 490, 158 S.E.2d 907. Workers’ Compensation 1939.4(1)

In workmen’s compensation cases the Industrial Commission is the fact‑finding body; the Supreme Court and the circuit court, both being appellate courts in workmen’s compensation matters, can only review the facts to determine whether or not there is any competent evidence to support the findings of the fact‑finding body. If there is, both the Supreme Court and the circuit court are without power to pass upon the force and effect of such evidence. When there is a conflict in the evidence, either of different witnesses or of the same witness, the findings of facts of the Industrial Commission, as triers of facts, are conclusive. Dawkins v. Capitol Const. Co. (S.C. 1967) 250 S.C. 406, 158 S.E.2d 651.

If there was any evidence to support a factual finding of the Commission on estoppel, such is binding on both the Supreme Court and the circuit court upon appeal. Hucks v. Green’s Fuel of S. C. (S.C. 1966) 247 S.C. 457, 148 S.E.2d 149. Workers’ Compensation 1939.4(2)

In their review of a factual finding by the Commission, the court’s function is limited to determination of whether or not such finding is supported by any competent evidence. Walker v. City of Columbia (S.C. 1966) 247 S.C. 241, 146 S.E.2d 856. Workers’ Compensation 1939.4(3); Workers’ Compensation 1969

The facts as found by the fact‑finding body are binding upon the Supreme Court if there is evidence to support such findings. Kay v. South Carolina Public Service Authority (S.C. 1965) 246 S.C. 168, 143 S.E.2d 130. Appeal And Error 1010.1(1)

The Supreme Court’s review of factual findings by the Commission is limited to the determination of whether or not there is any competent evidence to sustain such. Coleman v. Quality Concrete Products, Inc. (S.C. 1965) 245 S.C. 625, 142 S.E.2d 43. Workers’ Compensation 1969

The Commission is the fact‑finding body and on appeal, the Supreme Court and the circuit court are limited in their review of the facts to a determination of whether or not there is any competent evidence to support the factual findings of the Commission. Lorick v. South Carolina Elec. & Gas Co. (S.C. 1965) 245 S.C. 513, 141 S.E.2d 662. Workers’ Compensation 1939.4(3); Workers’ Compensation 1969

A finding of fact is conclusive and binding on appeal, if supported by any competent evidence. Rhodes v. Guignard Brick Works (S.C. 1965) 245 S.C. 304, 140 S.E.2d 487. Workers’ Compensation 1939.4(3)

In reviewing the facts upon which the Industrial Commission based its factual findings, the Supreme Court does not weigh the testimony but is only concerned with whether or not there is any competent evidence to sustain the findings of the Industrial Commission. Jake v. Jones (S.C. 1962) 240 S.C. 574, 126 S.E.2d 721. Workers’ Compensation 1939.4(3)

The court will affirm a factual finding of the Commission if there is any competent evidence in the record to sustain it, and reverse only if there is not. Cross v. Concrete Materials (S.C. 1960) 236 S.C. 440, 114 S.E.2d 828. Workers’ Compensation 1939.4(3)

If there is competent evidence to support the fact‑finding body, both the Supreme Court and the circuit court are without power to pass upon the force and effect of such evidence. Steed v. Mount Pleasant Seafood Co. (S.C. 1960) 236 S.C. 253, 113 S.E.2d 827.

The factual conclusions of the Commission cannot be reversed by the court if there is competent evidence to sustain them. Daley v. Public Sav. Life Ins. Co. (S.C. 1960) 236 S.C. 236, 113 S.E.2d 758. Workers’ Compensation 1939.4(3)

The factual findings of the Commission, if supported by competent evidence, are binding upon the court. Gray v. Laurens Mill (S.C. 1958) 233 S.C. 421, 105 S.E.2d 409. Workers’ Compensation 1939.4(3)

A conclusion of fact of the Commission, which is based upon evidence, is binding upon the courts. Scott v. Havnear Motor Co. (S.C. 1955) 226 S.C. 580, 86 S.E.2d 475. Workers’ Compensation 1939.4(1)

The limit of the inquiry which the appellate court is permitted to make is whether there is any competent testimony reasonably tending to support the finding of fact by the Commission, and the sufficiency of the evidence is for the Industrial Commission. Windham v. City of Florence (S.C. 1952) 221 S.C. 350, 70 S.E.2d 553. Workers’ Compensation 1964

The findings of fact by the Commission on a claim under the Workmen’s Compensation Act are conclusive, and not subject to review by the court. Layton v. Hammond‑Brown‑Jennings Co. (S.C. 1939) 190 S.C. 425, 3 S.E.2d 492.

15. Review as to matters of law

It is a settled rule that in workmen’s compensation cases the Industrial Commission is the fact‑finding body, and that, on appeal, the Supreme Court and the circuit court are limited in their review of the facts to a determination of whether or not there is any competent evidence to support the factual findings of the Commission. When there is a conflict in the evidence, either of different witnesses or of the same witness, the findings of fact of the Commission are conclusive. It is only when the evidence gives rise to but one reasonable inference that the question becomes one of law for the court to decide. Black v Barnwell County (1964) 243 SC 531, 134 SE2d 753. Herndon v Morgan Mills, Inc. (1965) 246 SC 201, 143 SE2d 376. Greer v Greenville County (1965) 245 SC 442, 141 SE2d 91. Polk v E. I. Du Pont De Nemours Co. (1968) 250 SC 468, 158 SE2d 765.

The power to review the action of the full Commission is limited to errors of law under the same terms and conditions as govern appeals in ordinary civil actions. Murdaugh v Robert Lee Const. Co. (1937) 185 SC 497, 194 SE 447. Sligh v Newberry Electric Cooperative, Inc. (1950) 216 SC 401, 58 SE2d 675. Wall v C. Y. Thomason Co. (1957) 232 SC 153, 101 SE2d 286.

Upon admitted or established facts the question of whether an accident is compensable is a question of law, and review thereof is not an invasion of the fact‑finding field of the Commission on the part of the court. Jordan v Dixie Chevrolet, Inc. (1950) 218 SC 73, 61 SE2d 654. Sylvan v Sylvan Bros., Inc. (1954) 225 SC 429, 82 SE2d 794.

In an appeal from the Workers’ Compensation Commission, Court of Appeals may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. Pratt v. Morris Roofing, Inc. (S.C.App. 2003) 353 S.C. 339, 577 S.E.2d 475, rehearing denied, certiorari granted, affirmed as modified 357 S.C. 619, 594 S.E.2d 272. Workers’ Compensation 1939.1; Workers’ Compensation 1939.6

A court may reverse or modify the Workers’ Compensation Commission’s decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are affected by other error of law. Etheredge v. Monsanto Co. (S.C.App. 2002) 349 S.C. 451, 562 S.E.2d 679, rehearing denied. Workers’ Compensation 1945; Workers’ Compensation 1946

Although it is logical for the full Workers’ Compensation Commission, which did not have the benefit of observing the witnesses, to give weight to the single commissioner’s opinion, the full Commission is empowered to make its own findings of fact and to reach its own conclusions of law consistent or inconsistent with those of the single commissioner. Muir v. C.R. Bard, Inc. (S.C.App. 1999) 336 S.C. 266, 519 S.E.2d 583, rehearing denied, certiorari denied. Workers’ Compensation 1704

A court may reverse or modify the full Workers’ Compensation Commission’s decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are affected by other error of law. Muir v. C.R. Bard, Inc. (S.C.App. 1999) 336 S.C. 266, 519 S.E.2d 583, rehearing denied, certiorari denied. Workers’ Compensation 1945; Workers’ Compensation 1946

In appeal from Workers’ Compensation Commission, Court of Appeals may not substitute its judgment for that of Commission as to weight of the evidence on questions of fact, but may reverse where the decision is affected by error of law. Hamilton v. Bob Bennett Ford (S.C.App. 1999) 336 S.C. 72, 518 S.E.2d 599, rehearing denied, certiorari granted in part, affirmed as modified 339 S.C. 68, 528 S.E.2d 667. Workers’ Compensation 1969

In a Workers’ Compensation action, where evidence is susceptible of but one reasonable inference, the question is one of law for the court rather than one for the Workers’ Compensation Commission. Mullinax v. Winn‑Dixie Stores, Inc. (S.C.App. 1995) 318 S.C. 431, 458 S.E.2d 76, rehearing denied, appeal dismissed. Workers’ Compensation 1704

The issue of whether a particular event constitutes a compensable accident is for the court. Sturkie v. Ballenger Corp. (S.C. 1977) 268 S.C. 536, 235 S.E.2d 120.

Court may decide whether a disease contracted by climatic exposure constitutes a compensable “accident.” Sturkie v. Ballenger Corp. (S.C. 1977) 268 S.C. 536, 235 S.E.2d 120.

Where evidence before Industrial Commission gives rise but to one reasonable inference, the question becomes one of law which the courts may review. Kinsey v. Champion Am. Service Center (S.C. 1977) 268 S.C. 177, 232 S.E.2d 720. Workers’ Compensation 1939.7

If the evidence is all one way, or if the findings of the Commission are based on surmise, speculation or conjecture, then the issue becomes one of law for the court and not of fact for the Commission. Herndon v. Morgan Mills, Inc. (S.C. 1965) 246 S.C. 201, 143 S.E.2d 376.

Where there was no evidence of substance to make issue with the unanimous professional opinion of the medical witnesses that, in effect, the death could not have been caused or accelerated by the accident, the lack of substantial conflict in the evidence rendered the question of causal connection or acceleration of death, which is ordinarily one of fact for the Commission, a question of law for decision by the court. Herndon v. Morgan Mills, Inc. (S.C. 1965) 246 S.C. 201, 143 S.E.2d 376.

When the evidence gives rise to but one reasonable inference the question becomes one of law for the court to decide. Lorick v. South Carolina Elec. & Gas Co. (S.C. 1965) 245 S.C. 513, 141 S.E.2d 662.

Court can consider only matters that were before the Commission and as to which error has been specifically assigned. Drake v. Raybestos‑Manhattan, Inc. (S.C. 1962) 241 S.C. 116, 127 S.E.2d 288.

Whether the claim of an injured workman is within the jurisdiction of the Industrial Commission is a matter of law for decision by the court, which includes the finding of the facts which relate to jurisdiction. Adams v. Davison‑Paxon Co. (S.C. 1957) 230 S.C. 532, 96 S.E.2d 566. Workers’ Compensation 1939.11(2)

Likewise if there is absolutely no evidence in support of a finding of fact by the Commission, the question thus becomes a question of law. Scott v. Havnear Motor Co. (S.C. 1955) 226 S.C. 580, 86 S.E.2d 475.

The question whether an injury arose out of or in the course of the employment is one of law where the facts are admitted, and one of fact where the evidence is conflicting. Williams v. City of Columbia (S.C. 1950) 218 S.C. 287, 62 S.E.2d 469. Workers’ Compensation 1719

The jurisdictional relationship created by a contract is a question of law, and the conclusion of the Commission is reviewable. McDowell v. Stilley Plywood Co. (S.C. 1947) 210 S.C. 173, 41 S.E.2d 872.

Upon a proper appeal under the Workmen’s Compensation Act when only a question of law is involved, the facts having been concluded by the finding of the Commission, the appellate court as to review and correction of errors has plenary powers. Jolly v. Atlantic Greyhound Corp. (S.C. 1945) 207 S.C. 1, 35 S.E.2d 42. Workers’ Compensation 1939.1

16. Review as to amount of award

The Industrial Commission being the fact‑finding body and the Supreme Court and the circuit court both being appellate courts in workmen’s compensation matters, the Supreme Court and the circuit courts can only review the facts to determine whether or not there is any competent evidence to support the findings of the fact‑finding body. If there is, the courts are without power to pass upon the force and effect of such evidence. An award may of course be reversed if there is an absence of any competent evidence to support it, but in workmen’s compensation cases the courts are not the triers of facts. If the facts proved are capable as a matter of law of sustaining the inferences of fact drawn from them by the Industrial Commission, its findings are conclusive in the absence of fraud and neither the Supreme Court nor the court of common pleas is at liberty to interfere with them. Buff v Columbia Baking Co. (1949) 215 SC 41, 53 SE2d 879. White v Carolina Power & Light Co. (1949) 215 SC 25, 53 SE2d 872. Schrader v Monarch Mills (1949) 215 SC 357, 55 SE2d 285. Hewitt v Cheraw Cotton Mills (1950) 217 SC 90, 59 SE2d 712. Teigue v Appleton Co. (1952) 221 SC 52, 68 SE2d 878. Heirs v Brunson Const. Co. (1952) 221 SC 212, 70 SE2d 211. Cross v Concrete Materials (1960) 236 SC 440, 114 SE2d 828.

An award may be reversed if there is an absence of any competent evidence to support it, but in workmen’s compensation cases the courts are not the triers of facts. If the facts proved are capable as a matter of law of sustaining the inferences of fact drawn from them by the Industrial Commission its findings are conclusive in the absence of fraud and neither this Court nor the court of common pleas is at liberty to interfere with them. Shehane v Springs Cotton Mills (1945) 206 SC 334, 34 SE2d 180. Parrott v Barfield Used Parts (1945) 206 SC 381, 34 SE2d 802. Schwartz v Mt. Vernon‑Woodberry Mills, Inc. (1945) 206 SC 227, 33 SE2d 517. Re Crawford (1944) 205 SC 72, 30 SE2d 841. Rudd v Fairforest Finishing Co. (1939) 189 SC 188, 200 SE 727. Malphrus v State Com. of Forestry & Workmen’s Compensation Fund (1952) 221 SC 75, 69 SE2d 70. Cross v Concrete Materials (1960) 236 SC 440, 114 SE2d 828.

The Supreme Court, and also the circuit court may reverse an award if there is an absence of evidence to support it. Hucks v. Green’s Fuel of S. C. (S.C. 1966) 247 S.C. 457, 148 S.E.2d 149; Fowler v. Abbott Motor Co. (S.C. 1960) 236 S.C. 226, 113 S.E.2d 737.

Upon an appeal from the Commission the circuit court may not reverse an award if there is any evidence to support it, that is to say, any competent evidence substantially tending to support the award. The court is not a trier of facts and may not pass upon the weight or adequacy of the evidence. King v Wesner (1941) 198 SC 49, 16 SE2d 289. Halpern v De Jay Stores, Inc. (1960) 236 SC 587, 115 SE2d 297. Corley v South Carolina Tax Com. (1960) 237 SC 439, 117 SE2d 577. Wynn v Peoples Natural Gas Co. (1961) 238 SC 1, 118 SE2d 812. Packer v Corbett Canning Co. (1961) 238 SC 431, 120 SE2d 398.

On appeal, the Supreme Court must affirm an award by the Industrial Commission, in which the circuit court concurred, if substantial evidence supports the findings. Linen v. Ruscon Const. Co. (S.C. 1985) 286 S.C. 67, 332 S.E.2d 211.

It is the exclusive function of the Industrial Commission to settle questions of fact. The limit of the inquiry which the circuit court and Supreme Court are permitted to make is whether there is any evidence reasonably tending to support the conclusions of the Commission. It follows that the Supreme Court, and also the circuit court, may reverse an award if there is an absence of evidence to support it. Sola v. Sunny Slope Farms (S.C. 1964) 244 S.C. 6, 135 S.E.2d 321.

Findings of fact within exclusive domain of Industrial Commission and courts will not review such finding, except to determine whether there is any competent evidence to support award, courts not being concerned with weight of testimony. Kennedy v. Williamsburg County (S.C. 1963) 242 S.C. 477, 131 S.E.2d 512.

The findings of fact by the full Industrial Commission in a workmen’s compensation claim case are conclusive, and neither the circuit court nor Supreme Court will review such findings except to determine whether or not there is any evidence to support the award. Wilson v. City of Darlington (S.C. 1956) 229 S.C. 62, 91 S.E.2d 714. Workers’ Compensation 1939.7

Upon the factual finding of serious facial or head disfigurement it is mandatory upon the Commission to make an award and the legislative injunction is upon them that it be “proper and equitable,” not upon the court of appeal, which should not interfere in the absence of an arbitrary or capricious award. The amount of the award is within the discretion of the Commission provided it be within the statutory limit. Schwartz v. Mount Vernon‑Woodberry Mills (S.C. 1945) 206 S.C. 227, 33 S.E.2d 517.

17. Conflicts in evidence

When there is a conflict in the evidence either of different witnesses or of the same witness, the findings of fact of the Industrial Commission, as triers of fact, are conclusive. Walsh v U. S. Rubber Co. (1961) 238 SC 411, 120 SE2d 685. Packer v Corbett Canning Co. (1961) 238 SC 431, 120 SE2d 398. Sola v Sunny Slope Farms (1964) 244 SC 6, 135 SE2d 321.

Regardless of conflict in the evidence, either of different witnesses or of the same witness, a finding of fact by the Commission is conclusive. Wynn v Peoples Natural Gas Co. (1961) 238 SC 1, 118 SE2d 812. Cokeley v Robert Lee, Inc. (1941) 197 SC 157, 14 SE2d 889. Steed v Mt. Pleasant Seafood Co. (1960) 236 SC 253, 113 SE2d 827. Glover v Columbia Hospital of Richland County (1960) 236 SC 410, 114 SE2d 565.

Where there is a conflict in the evidence, the Workers’ Compensation Commission’s findings of fact are conclusive. Sharpe v. Case Produce, Inc. (S.C. 1999) 336 S.C. 154, 519 S.E.2d 102. Workers’ Compensation 1939.5

Where there is conflict in the evidence, either by different witnesses or in testimony of the same witness, findings of fact of the South Carolina Workers’ Compensation Commission are conclusive. Tiller v. National Health Care Center of Sumter (S.C. 1999) 334 S.C. 333, 513 S.E.2d 843, rehearing denied. Workers’ Compensation 1939.5

Possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s findings from being supported by substantial evidence. Tiller v. National Health Care Center of Sumter (S.C. 1999) 334 S.C. 333, 513 S.E.2d 843, rehearing denied. Administrative Law And Procedure 791

Where there is a conflict in the evidence, either of different witnesses or of the same witness, the findings of fact of the Commission as triers of the facts are conclusive. Holcombe v. Dan River Mills/Woodside Div. (S.C.App. 1985) 286 S.C. 223, 333 S.E.2d 338. Workers’ Compensation 1939.5

Testimony of medical expert witness was not rendered incompetent by conflict and change from initial conclusion that cancer was not cause of worker’s disability to conclusion that cancer did arise from worker’s accident. Edwards v. Pettit Const. Co., Inc. (S.C. 1979) 273 S.C. 576, 257 S.E.2d 754. Workers’ Compensation 1418

Although there were conflicts in the evidence and medical testimony, a court may not weigh the testimony and upset the commission’s findings when supported by competent evidence. Sturkie v. Ballenger Corp. (S.C. 1977) 268 S.C. 536, 235 S.E.2d 120.

Lay testimony as to the cause of an injury will support a workmen’s compensation award, even if it conflicts with medical testimony. Aristizabal v. I. J. Woodside‑Division of Dan River, Inc. (S.C. 1977) 268 S.C. 366, 234 S.E.2d 21.

Where evidence is conflicting, the Commission’s affirmance of the hearing commissioner’s decision is conclusive. Amick v. City of Columbia (S.C. 1966) 247 S.C. 254, 146 S.E.2d 860.

When there is a conflict in the evidence, the findings of fact of the Commission are conclusive. Lorick v. South Carolina Elec. & Gas Co. (S.C. 1965) 245 S.C. 513, 141 S.E.2d 662.

If the evidence is susceptible of more than one reasonable inference, the full Commission’s finding must be sustained. Wilson v. City of Darlington (S.C. 1956) 229 S.C. 62, 91 S.E.2d 714.

It is well settled that findings of fact by the Industrial Commission are conclusive and binding upon both the court of common pleas and the Supreme Court, if there is any competent evidence reasonably tending to support them, even though there is evidence that would have supported a finding to the contrary. Willard v. Commissioners of Public Works of City of Spartanburg (S.C. 1951) 219 S.C. 477, 65 S.E.2d 874. Administrative Law And Procedure 683; Administrative Law And Procedure 788; Workers’ Compensation 1409; Workers’ Compensation 1939.4(3)

It is the duty and power of the appellate courts to study the testimony to determine whether there is any evidence to support the findings of fact of the fact‑finding body (the Industrial Commission), but an interpretation or construction thereof adverse to that found by the Commission, when the evidence is susceptible of more than one reasonable interpretation or meaning, is an invasion of the province of the Commission. Hamilton v. Little (S.C. 1941) 197 S.C. 434, 15 S.E.2d 662. Workers’ Compensation 1939.2

18. Circumstantial evidence

Circumstantial evidence may be relied upon to support a finding of fact or an award in workmen’s compensation cases, and such finding or award may be based on inferences drawn from such circumstantial evidence, which need not reach such a degree of certainty as to exclude every reasonable or possible conclusion other than that reached. Fowler v Abbott Motor Co. (1960) 236 SC 226, 113 SE2d 737. Grice v Dickerson, Inc. (1962) 241 SC 225, 127 SE2d 722; Kennedy v Williamsburg County (1963) 242 SC 447, 131 SE2d 512. Glenn v Dunean Mills (1963) 242 SC 535, 131 SE2d 696.

If the facts proved are capable as a matter of law of sustaining the inferences of fact drawn from them by the Commission, its findings are conclusive in the absence of fraud. Westbury v Heslep & Thomason Co. (1942) 199 SC 124, 18 SE2d 668. Jake v Jones (1962) 240 SC 574, 126 SE2d 721.

Circumstantial evidence and lay testimony can be sufficient to support a finding of causal connection in a workmen’s compensation case. Such evidence need not reach such a degree of certainty as to exclude every reasonable or possible conclusion other than that reached by the Commission. It is sufficient if the facts and circumstances proved give rise to a reasonable inference that there was a causal connection between the disability and the prior injury. Whether the absence of medical testimony is conclusive on the question of causation depends upon the particular facts and circumstances of the case. Mize v. Sangamo Elec. Co. (S.C. 1968) 251 S.C. 250, 161 S.E.2d 846.

Facts and circumstances giving rise to reasonable inference that there was causal connection between claimant’s present disability and his prior injury and surgical operation, sufficient to support finding of fact of Commission. Grice v. Dickerson, Inc. (S.C. 1962) 241 S.C. 225, 127 S.E.2d 722. Workers’ Compensation 1531.13(1)

To support an award in a workmen’s compensation case, based upon circumstantial evidence, the evidence need not reach such a degree of certainty as to exclude every reasonable or possible conclusion other than that reached by the Industrial Commission, but is sufficient if the circumstances surrounding the occurrence are such as to lead an unprejudiced mind reasonably to infer that death was caused by an accident within the meaning of the Workmen’s Compensation Act. Jake v. Jones (S.C. 1962) 240 S.C. 574, 126 S.E.2d 721. Workers’ Compensation 1490

19. Particular findings

In an action seeking workers’ compensation benefits arising from a back injury, substantial evidence supported the Workers’ Compensation Commission’s finding of 15 percent disability where (1) the medical evidence presented at the hearing showed the claimant had an impairment of 15 percent, (2) the physician stated that the claimant was “capable of doing light work and [should] avoid excessive bending of the back or lifting more than 30 lbs,” (3) the employer presented a video tape of the claimant hitting softballs, and (4) investigators testified that during 5 days of surveillance, they never saw the claimant exhibit any physical disabling conditions. O’Banner v. Westinghouse Elec. Corp. (S.C.App. 1995) 319 S.C. 24, 459 S.E.2d 324.

Substantial evidence existed to support the Workers’ Compensation Commission’s finding that the claimant’s death from heat stroke was causally related to his employment where the claimant’s physician testified that the heat stroke was an exertional heat stroke caused by exertion in a hot work environment. Justice v. BMG Distribution, Inc. (S.C. 1995) 318 S.C. 359, 458 S.E.2d 35, rehearing denied. Workers’ Compensation 1571

The Workers’ Compensation Commission improperly overruled a hearing commissioner’s order granting benefits on the ground that a doctor’s letter offered by the claimant, and relied on by the commissioner, was inadmissible since the doctor’s letter had expressly been made a part of the record by the claimant’s employer, thus constituting a waiver of any objection thereto. Hallums v. Michelin Tire Corp. (S.C.App. 1992) 308 S.C. 498, 419 S.E.2d 235, rehearing denied, certiorari denied. Workers’ Compensation 1821

The evidence supported the determination of the Workers’ Compensation Commission that an employee’s chronic kidney stones were not the result of occupational disease from inhaling an ethylene glycol mixture where he suffered from kidney stones both before and after his employment with the employer, and his treating physician was unable to state that exposure to ethylene glycol was a causative factor in the formation of his kidney stones. Boyce‑Abel In re Estate of Boyce v. Work (S.C. 1992) 308 S.C. 234, 417 S.E.2d 597.

The Workers’ Compensation Commission properly found that the testimony of an employee’s treating physician did not meet the applicable standard for expert testimony to support the employee’s claim of occupational injury resulting from exposure to ethylene glycol where the physician admitted that he had not reviewed all of the employee’s medical records, he opined that the exposure “was a reasonably probable causal factor” in the development of the condition, and he recommended several additional studies to be performed before a final determination was made, but failed to obtain the studies. Boyce‑Abel In re Estate of Boyce v. Work (S.C. 1992) 308 S.C. 234, 417 S.E.2d 597.

The determination as to whether an accident occurred is for the commission. Sturkie v. Ballenger Corp. (S.C. 1977) 268 S.C. 536, 235 S.E.2d 120.

The basic issue before the Commission as to whether there was causal connection between the employment and the heart attack was factual, and its determination by the Commission is therefore conclusive on appeal if supported by any competent evidence. Jones v. Williamsburg County (S.C. 1965) 245 S.C. 434, 141 S.E.2d 100.

The conclusion of the Commission was not lacking in evidentiary support; hence, it was binding upon the circuit court. Greer v. Greenville County (S.C. 1965) 245 S.C. 442, 141 S.E.2d 91.

The basic issue before the Commission as to whether there was causal connection between the employment of the deceased and the heart attack which resulted in death was factual, and its determination by the Commission is conclusive on appeal if supported by any competent evidence. Greer v. Greenville County (S.C. 1965) 245 S.C. 442, 141 S.E.2d 91. Workers’ Compensation 1719; Workers’ Compensation 1939.11(5)

The finding by the Commission that the employee “did not die as a result of an accident arising out of his employment, within the meaning of the Workmen’s Compensation Law” was a conclusion of fact based upon the inferences which the Commission drew from the testimony. Rhodes v. Guignard Brick Works (S.C. 1965) 245 S.C. 304, 140 S.E.2d 487.

There was ample competent evidence to support finding of Commission that death of employee proximately resulted from exposure to heavy concentration of Freon gas. Glenn v. Dunean Mills (S.C. 1963) 242 S.C. 535, 131 S.E.2d 696.

The extent of an injured workman’s disability is a question of fact for determination by the Commission and will not be reversed if it is supported by competent evidence. Colvin v. E. I. Du Pont De Nemours Co. (S.C. 1955) 227 S.C. 465, 88 S.E.2d 581. Workers’ Compensation 1939.11(5)

Whether there is an accident within the terms of the Compensation Act is a question of fact for determination by the Commission, and its conclusion will not be reversed by the court if there is any competent evidence to sustain it. Colvin v. E. I. Du Pont De Nemours Co. (S.C. 1955) 227 S.C. 465, 88 S.E.2d 581. Workers’ Compensation 1939.11(5)

Where medical testimony is relied upon that testimony to the effect that it is the witness’s opinion that such ailment most probably came from the cause alleged was sufficient to sustain an award by the Industrial Commission. Buff v. Columbia Baking Co. (S.C. 1949) 215 S.C. 41, 53 S.E.2d 879.

When there is competent evidence of disfigurement and the claimant is viewed by the full Commission and a finding of disfigurement is made, this Court will not undertake to substitute its judgment for that of the full Commission. However, where there is no competent evidence of disfigurement, the conclusion of the hearing commissioner, concurred in by the full Commission, cannot be substituted for evidence. Parrott v. Barfield Used Parts (S.C. 1945) 206 S.C. 381, 34 S.E.2d 802. Workers’ Compensation 1698; Workers’ Compensation 1939.1

Evidence held insufficient to support an award of the Commission. Buckman v. International Agr. Corp. (S.C. 1941) 196 S.C. 153, 13 S.E.2d 133.

See Spearman v F. S. Royster Guano Co. (1938) 188 SC 393, 199 SE 530, for a case holding that the finding of fact by the Commission that claimant’s condition was not the result of injury by accident was supported by abundant and substantial evidence. Spearman v. F.S. Royster Guano Co. (S.C. 1938) 188 S.C. 393, 199 S.E. 530.

20. Remand

In a workers’ compensation action, the duty to determine facts is placed solely on the Workers’ Compensation Commission and the court reviewing the decision of the Commission has no authority to determine factual issues but must remand the matter to the Commission for further proceedings. Fox v. Newberry County Memorial Hosp. (S.C. 1995) 319 S.C. 278, 461 S.E.2d 392. Workers’ Compensation 1939.2; Workers’ Compensation 1951

The Court of Appeals erred in determining that the record supported a Workers’ Compensation Commission’s finding that herpetic whitlow was an occupational disease where the Commission failed to find whether the disease was due to the peculiar occupation in which the claimant was engaged; in such cases, the Court of Appeals is obliged to remand the matter to the Commission for further findings of fact. Fox v. Newberry County Memorial Hosp. (S.C. 1995) 319 S.C. 278, 461 S.E.2d 392.

A circuit court erred in affirming an order of the Workers’ Compensation Commission where the full commission, following a remand of the case to the full commission for it to state separately findings of fact and conclusions of law in accordance with Section 1‑23‑350, conducted a de novo hearing and reversed a decision of the majority of a 3‑member panel denying a claimant benefits under the Workers’ Compensation Act. Where a case that has been appealed is remanded by the court to the Workers’ Compensation Commission with specific directions, the Commission must proceed in accordance with those directions. In such a case, the order limits the authority of the Commission, and the appeal remains pending in the circuit court while it awaits the Commission’s compliance with the order of remand. Since the circuit court remanded the case to the full commission with specific instructions and the full commission exceeded the authority granted it under the order of remand, the circuit court erred in not remanding the case to the full commission and directing it to comply with the circuit court’s earlier order. Bobo v. Marshane Corp. (S.C.App. 1990) 302 S.C. 86, 394 S.E.2d 2.

Remand is proper where the Commission has failed to make essential findings of fact, or the findings made are so indefinite or general as to afford no reasonable basis upon which the appellate court can determine whether the findings of fact are supported by the evidence and whether the law has been properly applied to those findings. To hold otherwise would in such cases make the determination of the rights of the parties turn upon the neglect of the Commission to make essential findings of fact, or require the appellate court to make the omitted findings of fact which the statute forbids. Turner v. Campbell Soup Co. (S.C. 1969) 252 S.C. 446, 166 S.E.2d 817.

**SECTION 42‑17‑70.** Judgment on agreement or award.

Any party in interest may file in the court of common pleas of the county in which the injury occurred a certified copy of a memorandum of agreement approved by the commission, an order or decision of the commission, an award of the commission unappealed from or an award of the commission affirmed upon appeal, whereupon such court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though such judgment had been rendered in a suit duly heard and determined by such court. But if the judgment debtor shall file a certificate duly issued by the commission, showing compliance with Section 42‑5‑20, with the clerk of the court in the county in which such judgment is docketed, such clerk shall make upon the judgment roll an entry showing the filing of such certificate which shall operate as a discharge of the lien of such judgment and no execution shall be issued thereon. But if at any time there is default in the payment of any installment due under the award set forth in such judgment the court may, upon application for cause and after ten days’ notice to the judgment debtor, order the lien of such judgment restored and execution or other proper process may be immediately issued thereon for past‑due installments and for future installments as they may become due.

HISTORY: 1962 Code Section 72‑357; 1952 Code Section 72‑357; 1942 Code Section 7035‑64; 1936 (39) 1231.

CROSS REFERENCES

Prohibition against retaliation based upon employee’s participation in proceedings under this title, see Section 41‑1‑80.

Library References

Workers’ Compensation 1037.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 1605 to 1610.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 312:9, Enforcement Proceedings.

Modern Workers’ Compensation Section 206:18, Statutes Governing Workers’ Compensation Liens.

LAW REVIEW AND JOURNAL COMMENTARIES

Judicial Review. 25 S.C. L. Rev. 513.

Attorney General’s Opinions

A judge rather than the clerk of court should render judgment upon Workers’ Compensation Commission Orders pursuant to Section 42‑17‑70. The clerk of court should provide notice of entry of judgment upon Commission Orders pursuant to Rule 77(d) South Carolina Rules of Civil Procedure. 1987 Op.Atty.Gen., No. 87‑91, p 245, 1987 WL 245499.

NOTES OF DECISIONS

In general 1

Jurisdiction 2

1. In general

The necessary implication from the language used in this section [Code 1962 Section 72‑357] is to provide for an appeal from the judgment of the court of common pleas to the Supreme Court, and all proceedings in relation thereto after such judgment is rendered shall be the same as provided in the Code with reference to appeals from other judgments of the court of common pleas, including the supersedeas provisions contained in Code 1962 Sections 7‑401 to 7‑430. McDonald v Palmetto Theaters (1941) 196 SC 38, 11 SE2d 444. Case v Hermitage Cotton Mills (1960) 236 SC 515, 115 SE2d 57.

Since judgment may be had only with respect to an award “unappealed from” or an award “affirmed upon appeal,” if there is an appeal from an award, the administrative proceeding is incomplete until the appeal has been disposed of, and until that time it cannot be said that a cause of action at law in favor of plaintiff has been created by the award. St Paul Mercury Indem Co v. Sylvan (C.A.4 (S.C.) 1954) 213 F.2d 137.

Section 42‑17‑10, which relates to compensation agreements between an employer and an employee, permits correction of the compensation rate at any time before the Workers’ Compensation Commission formally approves the rate of compensation. Once a single commissioner approves the allegedly erroneous rate, the memorandum becomes enforceable as if it were an order of the Commission. Thereafter, the proper remedy is a timely appeal to the full commission and then to the courts; the administrative remedy provided by Section 42‑17‑10 no longer applies. This limitation promotes finality of the Commission’s decisions and certainty as to the amount of compensation payable, and prevents the parties from reopening the issue of the amount of compensation long after the initial agreement has been settled. Lloyd v. AT & T Nassau Metals Corp. (S.C.App. 1989) 299 S.C. 207, 383 S.E.2d 257.

This section [Code 1962 Section 72‑357] does not expressly or by necessary implication render the general supersedeas provisions of Code 1962 Sections 7‑412 and 7‑418 applicable to appeals from the circuit court to the Supreme Court in workmen’s compensation cases, and the provisions of the latter sections, being supersedeas provisions of the general law relating to appeals, must yield to those of Code 1962 Section 72‑356, a subsequent law, special in nature, with which they are in conflict. Case v. Hermitage Cotton Mills (S.C. 1960) 236 S.C. 515, 115 S.E.2d 57.

The language of this section [Code 1962 Section 72‑357], providing that upon filing of award unappealed from the court of common pleas shall render judgment in accordance therewith, is mandatory, and the rendition of judgment in such case is ministerial rather than judicial, for the award is subject to review only by the appeal procedure. Wall v. C. Y. Thomason Co. (S.C. 1957) 232 S.C. 153, 101 S.E.2d 286. Workers’ Compensation 1038

Nothing in this section [Code 1962 Section 72‑357] expressly or impliedly requires entry of judgment by counsel as is the practice in the case of a judgment at law upon verdict. The proceeding is more like a decree in equity upon a master’s report. McCants v. West Virginia Pulp & Paper Co. (S.C. 1953) 223 S.C. 467, 76 S.E.2d 614.

The award of the Commission, exceptions thereto upon appeal, and order of the court thereupon constitute, without further formality or entry, the “judgment roll” as that term is used in this section [Code 1962 Section 72‑357]. McCants v. West Virginia Pulp & Paper Co. (S.C. 1953) 223 S.C. 467, 76 S.E.2d 614.

This section [Code 1962 Section 72‑357] makes no direct reference to a case where the court of common pleas reinstates the award of the hearing commissioner on the appeal; but this award would have been deemed the award of the Commission, if no application had been made for the review thereof; hence its reinstatement is equivalent, for the purposes of this section [Code 1962 Section 72‑357], to affirming an award of the Commission. McDonald v. Palmetto Theaters (S.C. 1940) 196 S.C. 38, 11 S.E.2d 444.

2. Jurisdiction

The Circuit Court had jurisdiction to entertain a claimant’s motion for an order compelling his employer to make payments of permanent partial disability benefits accruing after the date of decision by the Industrial Commission, notwithstanding the requirement of Section 42‑3‑180 that all issues arising under the Workers’ Compensation Title be first submitted to the Commission for determination, since Section 42‑17‑70 allows payment of weekly compensation accruing after the date of the Commission’s award; however, where a proceeding was remanded, no payments would be required until expiration of the 30‑day period following the Commission’s decisions on the remanded issues. McLeod v. Piggly Wiggly Carolina Co. (S.C.App. 1984) 280 S.C. 466, 313 S.E.2d 38.

**SECTION 42‑17‑80.** Costs.

If the commission or any court before whom any proceedings are brought under this title shall determine that such proceedings have been brought, prosecuted or defended without reasonable grounds, it may assess the whole cost of the proceedings upon the party who has brought or defended them.

HISTORY: 1962 Code Section 72‑358; 1952 Code Section 72‑358; 1942 Code Section 7035‑65; 1936 (39) 1231.

Library References

Workers’ Compensation 1980.7.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Section 1576.

RESEARCH REFERENCES

Treatises and Practice Aids

Modern Workers’ Compensation Section 317:12, Costs.

NOTES OF DECISIONS

In general 1

1. In general

Evidence sustained holding of Commission that the defendants defended without reasonable grounds. Dameron v Spartan Mills (1947) 211 SC 217, 44 SE2d 465. Cole v State Highway Dept. (1939) 190 SC 142, 2 SE2d 490.

Although the Commission makes no express finding of fact or of law that the appellant defended the case without reasonable grounds, nevertheless its imposition of costs is evidence that such finding was made by the Commission, for if no such conclusion was reached, the Commission could not make such assessment under the power vested in it by this section [Code 1962 Section 72‑358]. Cole v. State Highway Department (S.C. 1939) 190 S.C. 142, 2 S.E.2d 490. Workers’ Compensation 1762

**SECTION 42‑17‑90.** Review of award on change of condition.

(A) On its own motion or on the application of a party in interest on the ground of a change in condition, the commission may review an award and on that review may make an award ending, diminishing, or increasing the compensation previously awarded, on proof by a preponderance of the evidence that there has been a change of condition caused by the original injury, after the last payment of compensation. An award is subject to the maximum or minimum provided in this title, and the commission immediately shall send to the parties a copy of the order changing the award. The review does not affect the award as regards any monies paid and the review must not be made after twelve months from the date of the last payment of compensation pursuant to an award provided by this title.

(B) A motion or application for change in condition involving a repetitive trauma injury must be made within one year from the date of the last compensation payment for the repetitive trauma injury. Any filing not made within this one‑year period shall be considered untimely and shall not be reviewed.

(C) A motion or application for change in condition involving an occupational disease must be made within one year from the date of the last compensation payment for the occupational disease. Any filing not made within this one‑year period shall be considered untimely and shall not be reviewed.

HISTORY: 1962 Code Section 72‑359; 1952 Code Section 72‑359; 1942 Code Section 7035‑49; 1936 (39) 1231; 2007 Act No. 111, Pt I, Section 31, eff July 1, 2007, applicable to injuries that occur on or after that date.

CROSS REFERENCES

Employer’s answer to a request for hearing, time for filing and service, see S.C. Code of Regulations R. 67‑603.

Library References

Workers’ Compensation 2015, 2050.

Westlaw Topic No. 413.

C.J.S. Worker’s Compensation Sections 1653 to 1656, 1666, 1668 to 1669.

LAW REVIEW AND JOURNAL COMMENTARIES

Judicial Review. 25 S.C. L. Rev. 513.

NOTES OF DECISIONS

In general 1

Causation 4

Change in condition 3

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Questions of fact 7

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Sufficiency of evidence 8

Timing 5

1. In general

A change in condition that would permit review of a previous workers’ compensation award occurs when the claimant experiences a change in physical condition as a result of her original injury, occurring after the first award. Russell v. Wal‑Mart Stores, Inc. (S.C.App. 2016) 415 S.C. 395, 782 S.E.2d 753, rehearing denied. Workers’ Compensation 2006

Generally, an appeal of a workers’ compensation order is concerned with the conditions prior to and at the time of the original award of the Workers’ Compensation Commission, while review for a change of condition is concerned with conditions that have arisen thereafter. Russell v. Wal‑Mart Stores, Inc. (S.C.App. 2016) 415 S.C. 395, 782 S.E.2d 753, rehearing denied. Workers’ Compensation 1910; Workers’ Compensation 2005

Review under this section [Code 1962 Section 72‑359] is not available as an alternative to, or substitute for, an appeal. Causby v. Rock Hill Printing & Finishing Co. (S.C. 1967) 249 S.C. 225, 153 S.E.2d 697. Workers’ Compensation 1990

Where the question of whether a claimant sustained an injury by accident is finally adjudicated by an agreement as to compensation, which is duly approved by the Industrial Commission and a formal award entered thereon, the employer and its insurance carrier cannot retry the basic issue of liability in a proceeding to review the award on the ground of alleged change of condition. Allen v. Benson Outdoor Advertising Co. (S.C. 1960) 236 S.C. 22, 112 S.E.2d 722. Workers’ Compensation 2067

Where claimant had received temporary total disability payments under approved agreement and signed final receipt and payments were stopped, but employer’s and carrier’s evidence at hearing was susceptible of only one conclusion and that was that claimant’s total disability which was stipulated had continued without interruption since his injury, it would be substituting form for matter to remand the case for rehearing to require claimant to affirmatively show a change of condition. Godfrey v. Mills Mill No. 2 (S.C. 1959) 234 S.C. 442, 108 S.E.2d 832.

An ordinary award of the Commission is not a final judgment in the sense that term is used with reference to a judgment of a court, because under the provisions of this section [Code 1962 Section 72‑359] such awards are reviewable at any time on the ground of change of condition, subject to the limitation that no such review shall be made after twelve months from date of last payment of compensation. This is, however, a different question from the validity and finality of a settlement fairly entered into and approved by the Commission, including a release of future claims and demands, which is regarded to be valid and enforceable. Atkins v. Charleston Shipbuilding & Drydock Co. (S.C. 1945) 206 S.C. 63, 33 S.E.2d 46.

Where claimant had received a lump sum settlement and he was entitled to a review on account of change of condition, which was found and had the new status of temporary total disability, it was held that he could not actually receive further sums of money until the amount received in the settlement, applied to temporary total disability, or a fixed and increased permanent partial disability, which may hereafter be fixed following medical treatment and surgery, had been absorbed out of the portion of the settlement representing permanent partial disability heretofore allowed. Atkins v. Charleston Shipbuilding & Drydock Co. (S.C. 1945) 206 S.C. 63, 33 S.E.2d 46. Workers’ Compensation 2077

Subject to the conditions of Code 1962 Sections 72‑191 and 72‑351 the Industrial Commission has the power to approve a lump sum settlement and make it final and binding and not subject to review under any conditions. Atkins v. Charleston Shipbuilding & Drydock Co. (S.C. 1945) 206 S.C. 63, 33 S.E.2d 46. Workers’ Compensation 2068

This section [Code 1962 Section 72‑359] does not pertain to the authority of the Commission to grant a rehearing or to admit additional evidence in a case after the full Commission has rendered an opinion and award adjudicating the case on the facts. In re Crawford (S.C. 1944) 205 S.C. 72, 30 S.E.2d 841. Workers’ Compensation 1794

The purpose of this section [Code 1962 Section 72‑359] is to enable the Commission to end compensation in cases where the change in condition amounts to a complete recovery; to enable it to diminish compensation where the change in condition is for the better; and to increase compensation where the facts developed upon a review show that the change in condition is for the worst. Cromer v. Newberry Cotton Mills (S.C. 1942) 201 S.C. 349, 23 S.E.2d 19. Workers’ Compensation 2009; Workers’ Compensation 2010

Where compensation has been paid and the award approved and the case closed, it may still be reopened on the grounds of a change in the employee’s condition, where the question of the permanency of the injuries was not considered in the settlement; and a final receipt or a release will not preclude a review on such grounds; not even where the receipt recites that the disability has ceased. Cole v. State Highway Department (S.C. 1939) 190 S.C. 142, 2 S.E.2d 490. Workers’ Compensation 2069

2. Construction and application

A liberal construction of this section [Code 1962 Section 72‑359] is required. Allen v. Benson Outdoor Advertising Co. (S.C. 1960) 236 S.C. 22, 112 S.E.2d 722.

3. Change in condition

A change in condition means a change in the physical condition of the claimant as a result of the original injury, occurring after the first award. Cromer v Newberry Cotton Mills (1942) 201 SC 349, 23 SE2d 19. Causby v Rock Hill Printing & Finishing Co. (1967) 249 SC 225, 153 SE2d 697.

If claimant sustained injuries at the time of the original action which he knew about at the time of his claim, but for some reason failed to include in the claim, he cannot for the first time assert disability from these injuries in a petition based on “change of condition.” Krell v South Carolina State Highway Dept. (1961) 237 SC 584, 118 SE2d 322. Cromer v Newberry Cotton Mills (1942) 201 SC 349, 23 SE2d 19.

If the mental condition is causally connected to the original injury, is a newly manifested symptom of that injury, and has caused a worsening of the workers’ compensation claimant’s condition, then it is proper for the single commissioner to consider the mental condition at a change of condition hearing. Wilson v. Charleston County School District (S.C.App. 2017) 419 S.C. 442, 798 S.E.2d 449, rehearing denied. Workers’ Compensation 2040

Just as physical changes of condition are properly considered when reviewing a workers’ compensation claimant’s initial award, so too are mental changes of condition. Wilson v. Charleston County School District (S.C.App. 2017) 419 S.C. 442, 798 S.E.2d 449, rehearing denied. Workers’ Compensation 2040

A change in condition occurs when the workers’ compensation claimant experiences a change in physical condition as a result of her original injury, occurring after the first award. Wilson v. Charleston County School District (S.C.App. 2017) 419 S.C. 442, 798 S.E.2d 449, rehearing denied. Workers’ Compensation 2006

Workers’ compensation claimant’s claim that she suffered change in physical condition as result of original work‑related back injury did not have to be proven by objective medical evidence; rather, Workers’ Compensation Commission should have also considered testimony of physicians that, although there was no objective or significant radiographical difference to be noted in claimant’s magnetic resonance imaging (MRI) scans and that claimant’s radiographic condition had not worsened, to reasonable degree of medical certainty, claimant had suffered chronic change to nerve. Russell v. Wal‑Mart Stores, Inc. (S.C.App. 2016) 415 S.C. 395, 782 S.E.2d 753, rehearing denied. Workers’ Compensation 2033

Change of condition in a workers’ compensation claim is a change in the claimant’s physical condition as a result of the original injury, occurring after the first award. Carter v. Verizon Wireless (S.C.App. 2014) 407 S.C. 641, 757 S.E.2d 528. Workers’ Compensation 2006

Workers’ Compensation Commission Appellate Panel’s restriction, stating that claimant was entitled to causally‑related future medical treatment that might tend to lessen her period of disability, specifically restricted to specific medication, affected claimant’s substantial right to receive future medical care and treatment that would tend to lessen the period of her disability, and thus, the restriction would be stricken; restriction deprived claimant of the opportunity to seek any medical treatment besides pain medications for her deteriorating knee condition. Carter v. Verizon Wireless (S.C.App. 2014) 407 S.C. 641, 757 S.E.2d 528. Workers’ Compensation 984

In workers’ compensation action, events subsequent to full commission’s August 1998 order affirming a single commissioner’s finding that claimant had not reached maximum medical improvement and was entitled to medical payments, including a letter from a physician indicating a changed diagnosis in August 1998, were appropriate for consideration in a subsequent action alleging a change of condition, where commission limited its order to a determination of workers’ compensation claimant’s condition prior to August 1998. Gattis v. Murrells Inlet VFW No. 10420 (S.C.App. 2003) 353 S.C. 100, 576 S.E.2d 191, rehearing denied, certiorari denied. Workers’ Compensation 2040

Generally, an appeal from workmen’s compensation award is concerned with conditions prior to and at time of original opinion and award, whereas review under statute concerning change of condition is concerned with conditions arising thereafter. Gattis v. Murrells Inlet VFW No. 10420 (S.C.App. 2003) 353 S.C. 100, 576 S.E.2d 191, rehearing denied, certiorari denied. Workers’ Compensation 1910; Workers’ Compensation 2005

Under Section 42‑17‑90, the review of an award based on a change of condition is sharply restricted to the question of the extent of improvement or worsening of the injury on which the original award was based; consequently, the statute is not applicable to a claim which was not previously compensated. Owenby v. Owens Corning Fiberglas (S.C.App. 1993) 313 S.C. 181, 437 S.E.2d 130.

An appeal is concerned with conditions prior to and at the time of the original opinion and award, whereas review under this section [Code 1962 Section 72‑359] is concerned with conditions that have arisen thereafter. Causby v. Rock Hill Printing & Finishing Co. (S.C. 1967) 249 S.C. 225, 153 S.E.2d 697. Workers’ Compensation 1824; Workers’ Compensation 1990

In a reopening proceeding, the issue before the Commission is sharply restricted to the question of extent of improvement or worsening of the injury on which the original award was based. Krell v. South Carolina State Highway Dept. (S.C. 1961) 237 S.C. 584, 118 S.E.2d 322. Workers’ Compensation 2040

The mere fact that there is a difference between the first award and the award made after a review, does not entitle a defendant to claim that the first award is res adjudicata. The question before the Commission upon the review is, has there been a change in condition, a question which is not at all before the Commission at the first hearing. Cromer v. Newberry Cotton Mills (S.C. 1942) 201 S.C. 349, 23 S.E.2d 19.

4. Causation

Mental condition which is induced by compensable physical injury is causally related to physical injury, and thus may be compensated in change of condition workers’ compensation proceeding as part of original injury. Estridge v. Joslyn Clark Controls, Inc. (S.C.App. 1997) 325 S.C. 532, 482 S.E.2d 577, rehearing denied. Workers’ Compensation 2006

If workers’ compensation claimant’s mental condition is causally connected to original, compensable physical injury, and is newly manifested symptom of original injury which has caused worsening of condition, mental condition can be considered in change of condition proceeding. Estridge v. Joslyn Clark Controls, Inc. (S.C.App. 1997) 325 S.C. 532, 482 S.E.2d 577, rehearing denied. Workers’ Compensation 2040

If workers’ compensation claimant’s mental condition is not causally connected to original, compensable physical injury, or is separate injury which could have been included in original claim but was not, mental condition cannot be considered in change of condition proceeding. Estridge v. Joslyn Clark Controls, Inc. (S.C.App. 1997) 325 S.C. 532, 482 S.E.2d 577, rehearing denied. Workers’ Compensation 2040

If a review of a compensation agreement or settlement is sought on the change in the condition of the employee, a change in condition must be shown, and it must be causally connected with the original compensable accident. Krell v. South Carolina State Highway Dept. (S.C. 1961) 237 S.C. 584, 118 S.E.2d 322. Workers’ Compensation 2066

5. Timing

The date workers’ compensation claimant filed her change in condition form, rather than the date of the hearing on the change of condition, applied to determine whether claimant filed her change of condition form within 12 months from the date of her last workers’ compensation payment. Wilson v. Charleston County School District (S.C.App. 2017) 419 S.C. 442, 798 S.E.2d 449, rehearing denied. Workers’ Compensation 2016

The Workers’ Compensation Commission erred in requiring payment of the claimant’s medical expenses even though they were a result of a change in condition since the final award where the review of the change in condition was not made within 12 months of the last payment of compensation. Creech v. Ducane Co. (S.C.App. 1995) 320 S.C. 559, 467 S.E.2d 114, rehearing denied, certiorari denied.

An application for review must be made within one year after the last payment of compensation. Allen v. Benson Outdoor Advertising Co. (S.C. 1960) 236 S.C. 22, 112 S.E.2d 722.

An application for review having been filed within one year after the last payment of compensation, the Industrial Commission had jurisdiction to hear it after the expiration of the one‑year period. Allen v. Benson Outdoor Advertising Co. (S.C. 1960) 236 S.C. 22, 112 S.E.2d 722.

Any award made by the Industrial Commission is final, except for review within 12 months as provided by this section [Code 1962 Section 72‑359], and the Commission was without authority in undertaking to retain jurisdiction for three hundred weeks, pending future developments, since such had the effect of circumventing the time limitation under this section [Code 1962 Section 72‑359]. Keeter v. Clifton Mfg. Co. (S.C. 1954) 225 S.C. 389, 82 S.E.2d 520. Workers’ Compensation 1185

Employee, who was paid temporary total disability under agreement which was later stopped by the insurance carrier without permission of the Industrial Commission and without notice to the employee under Code 1962 Section 72‑352, was not barred by this section thirteen months later from seeking a final determination of his claim. Halks v. Rust Engineering Co. (S.C. 1946) 208 S.C. 39, 36 S.E.2d 852.

The conclusiveness of this provision is inescapable. Wallace v. Campbell Limestone Co. (S.C. 1941) 198 S.C. 196, 17 S.E.2d 309.

6. Res judicata

Res judicata did not bar workers’ compensation claimant’s change of condition claim, which sought to include claimant’s psychological condition as a compensable condition; substantial evidence indicated claimant’s psychological condition worsened at some point after the initial hearing and prior to her filing of the form alleging a change of condition, claimant’s primary care physician referred her, for the first time, to a psychiatrist, who subsequently diagnosed her with endogenous depression, after the date of the last payment of compensation for her neck and back condition, and there would have been no reason for physician to refer claimant to a psychiatrist if her depression had not changed. Wilson v. Charleston County School District (S.C.App. 2017) 419 S.C. 442, 798 S.E.2d 449, rehearing denied. Workers’ Compensation 2050

Order awarding workers’ compensation benefits for physical injury did not resolve any claim for psychological injury allegedly caused by physical injury, and claim for psychological injury asserted in change of condition proceeding thus was not barred under principles of res judicata, where order contained no finding that psychological injury was not caused by physical injury, and where, although psychological problem was discussed in original hearing, vocational expert discounted it as basis for liability. Estridge v. Joslyn Clark Controls, Inc. (S.C.App. 1997) 325 S.C. 532, 482 S.E.2d 577, rehearing denied. Workers’ Compensation 1791

7. Questions of fact

The question of whether there is any causal connection between the injury and claimant’s present condition is a question of fact for the Industrial Commission in a proceeding to review an award on the ground of alleged change of condition. Allen v. Benson Outdoor Advertising Co. (S.C. 1960) 236 S.C. 22, 112 S.E.2d 722.

8. Sufficiency of evidence

Doctor’s testimony and portions of claimant’s testimony constituted substantial evidence supporting the Workers’ Compensation Commission Appellate Panel’s decision that claimant did not suffer a change of condition, and any change in claimant’s condition was the result of the natural progression of her pre‑existing degenerative joint disease and not the result of her original injury; doctor’s testimony reflected there was a natural progression of claimant’s disease, and at one point, doctor testified that claimant’s condition was more of a degenerative, insidious, slow problem, and it was doctor’s professional medical opinion, within a reasonable degree of medical certainty, that claimant had a natural progression of her disease. Carter v. Verizon Wireless (S.C.App. 2014) 407 S.C. 641, 757 S.E.2d 528. Workers’ Compensation 2030

Substantial evidence supported the Workers’ Compensation Commission’s finding that claimant sustained a change in condition subsequent to the prior award, even though claimant had back surgery before the full commission issued its order in the initial proceeding; claimant had no way of knowing whether back surgery would improve his condition, and thus the issue of whether there had been a change in condition was not yet ripe for review when the full commission issued its initial order, and physician testified that claimant’s condition worsened prior to the surgery and that he recommended urgent surgery, and claimant testified that surgery initially relieved some of his pain, but that pain to his legs and back returned several months later. Clark v. Aiken County Government (S.C.App. 2005) 366 S.C. 102, 620 S.E.2d 99. Workers’ Compensation 2033

Substantial evidence supported finding that workers’ compensation claimant, who had been receiving benefits for a back injury sustained while working as a bartender, experienced a change of condition approximately three years later entitling her to further total temporary disability benefits; physician at a center specializing in spine injuries reviewed claimant’s updated diagnostic tests including a discogram, bone scan, and MRI, and opined that a back surgery would likely improve her pain level and function, and very likely decrease the tenure and/or severity of her pain and impairment, and claimant’s prior physician also opined that claimant was a candidate for back surgery. Gattis v. Murrells Inlet VFW No. 10420 (S.C.App. 2003) 353 S.C. 100, 576 S.E.2d 191, rehearing denied, certiorari denied. Workers’ Compensation 2033

9. Review

An order of the full commission holding that an employee was not entitled to further workers’ compensation benefits was insufficient for appellate review where the facts showed that the employee (1) injured his knee on the job, (2) had been told that he did not have cartilage damage by the employer’s doctor, (3) agreed to a settlement for permanent disability based on this diagnosis, and (4) then found out from an independent doctor that he did have cartilage damage, but the commission failed to state the facts on which it relied to hold that the employee did not establish a change of condition or a mutual mistake; therefore, the order would be remanded for further factfinding. Brayboy v. Clark Heating Co., Inc. (S.C. 1991) 306 S.C. 56, 409 S.E.2d 767.

On appeal from a ruling of the Commission under this section [Code 1962 Section 72‑359], an appellate court’s function is to determine whether there was any competent evidence in support of the findings of the fact‑finding tribunal. Krell v. South Carolina State Highway Dept. (S.C. 1961) 237 S.C. 584, 118 S.E.2d 322.